take exception to the timing of many projects, but will limit my remarks to only three major areas: The F–1 engine; Project Rover, the nuclear-powered rocket; and NASA's lack of a plan for manned lunar landing during this 10-year period.

The F–1 engine, being developed by North American's Rocketdyne Division for NASA, will produce 1½ million pounds of thrust. Four of these engines will be clustered to make the Nova launch vehicle of 6 million pounds of thrust, enough thrust to launch a manned interplanetary mission.

The NASA claims that this engine has been delayed 12 to 18 months, due to lack of funds in the 1960 budget. As a result, the first flight test is not scheduled until 1968, and no date has been set for the completion of the Nova space vehicle. It will be 8 years before we are ready to flight-test this vehicle. Is that urgency? Is it typical of the urgency associated with the space program? I assure you that I am vitally concerned, and I suspect you are, too.

When the Atomic Energy Commission witnesses appeared to discuss the nuclear propulsion powerplant, their testimony conflicted, in my opinion, with that of the NASA witnesses. Project Rover, the nuclear-powered rocket, is being developed jointly by AEC and NASA. The AEC is responsible for designing and operating an engine. NASA takes it from there, assembles it, flies it and fits it into the space program. The AEC witnesses stated that they can develop the Rover device and demonstrate its actual use, probably in a shorter time than set forth in the requirement.

The NASA witnesses, however, were much more conservative. They assured the committee that the program is being expedited to the fullest extent. So the debate is on—it will continue for years to come. How will it be resolved? Hopefully, there is a sense of urgency in the AEC, as indicated by the fact that on March 8, the AEC itself transferred funds within its budget to add $11 million to the Project Rover experiments. I see no comparable sense of urgency in the NASA program. And yet, knowing the importance of this project, I long to sympathize with the AEC witness who commented: "I would like to see this one have the stars and stripes on it, for a change."

The last point I wish to make regards NASA's lack of a plan for a manned lunar landing during the next 10 years. There are rumors already flying that the U.S.S.R. will celebrate the 50th anniversary of the Bolshevik revolution on the moon. Will we be there to greet them? Or is that the day we shall promise to accelerate our program for a manned lunar landing?

Mr. Khrushchev has already boasted that the mark of the Soviet Union has been stamped on the moon. It is well within the technical and industrial capacity of the Russians to land a man on the moon one day in the near future.

The future of the free world may well depend on whether or not a U.S. mission is already on the moon when that event occurs.

Consider the possibility of a Russian lunar base and the threat that could literally be hung over the heads of the free world. Gen. Homer Boushey, of the USAF, was the first to speak out in favor of a lunar base, its capabilities and potential. His remarks were scoffed at in some circles. I, for one, fear the results of being second on the moon. A manned lunar landing and return, in the 1970's, as NASA outlines its schedule, is much to late.

The first need, then, is the recognition that we must be first. I believe that we cannot fail, if we resolutely determine that we will not. Once that is accepted, some other lines of approach fall into place.

We must, for instance, make better use of the resources of industry and management available to us in this country. We know that the full scale of the skills and talents here have scarcely been tapped. Even in production, we are not making the defense effort today in terms of proportion of gross national product that we were in 1953—and we are making only one-fifth the effort we made in World War II, when we knew it had to be done.

We must do everything we can to streamline, and to make more effective the organization and management of our national programs. Few believe that we are squeezing every last ounce of effort out of our Defense Establishment. I can tell you candidly that I do not think we have enlisted all our managerial talent in this space field. We certainly do not see the single-mindedness of a Manhattan district in this space effort.

Even in such a field as communication of information regarding the state of the art, more must be done. Researchers are complaining about the proliferation of scientific papers and meetings. Industry is said to be committing some $21 million a year to these exchanges, which consume 258,000 man-days of technical time, and it has been difficult to weed out overlapping and duplication.

Is the way we disseminate technical information good enough to meet the challenge of modern technology? A recent Guggenheim Foundation study urged we go beyond our traditional ways to seek better methods that could produce important results.

We have made real gains in awakening to scientific research and findings elsewhere in the world. Government has intensified the translation of scientific documents. We are translating more papers on scientific work than ever before. The material is made available to industry through the Office of Technical Services of the Department of Commerce, and there has been a growing interest. I am told that OTS is selling more monographs every month, and that more libraries, industrial and public, have started following the material. The twice-monthly publication, Technical Translations, which started a year ago with 150 to 175 listings of new translations, now lists about 600 an issue. Government is thus pointing out some 12,000 to 13,000 translations a year which may be of use. Industry is also showing interest in a projected publication that would digest news releases and articles in Russian journals, so that a quicker break is possible in learning what the Russians are doing.

Today, the problems of space research, development, exploration and exploitation are still in their infancy. Vanguard I was a stepping-stone to a great future. What is still needed is a firm and clear decision by the United States and the free world to press ahead. The Communists are making capital of space exploration and the propaganda that goes with it. They found in their space achievements a chance to prove to themselves and to the world what they could do in a highly advanced technology. The United States must counter this propaganda by unleashing its technological know-how and industrial power to regain world leadership in the space race. Then our deeds will speak for themselves.

SENATE

TUESDAY, MARCH 22, 1960

(Legislative day of Monday, March 21, 1960)

The Senate met at 12 o'clock meridian, on the expiration of the recess, and was called to order by the President pro tempore.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Our Father, God, we come confessing that the world is so much with us that too often the far look hides the nearest mercies. With our minds so intent upon questions that affect the planet which is our home, help us not to lose the shining values of the common, yet precious, things we are tempted to take for granted.

Make us thankful that our friends are patient with us, and take time to understand us, and that there are those who love us and believe in us, when we give them so little in return.

Help us to see how much has come to us, and still comes with each new day, that we have done nothing to deserve; for what have we that we have not received?

Forbid that our pessimism and gloom should but add to the hopelessness that is in the world. Defying all the pressures of evil, may we be strengthened with might, and in the faith that we can be a part of Thy truth that is marching on, pushing back evil, and establishing the good.

As spokesmen for the Nation whose ideals are as a rainbow arching the world's dark sky, make Thy servants here in the ministry of public affairs sufficient for the tasks destiny is calling upon them to undertake.

We ask it in the dear Redeemer's name. Amen.

THE JOURNAL

On request of Mr. JOHNSON of Texas, and by unanimous consent, the reading of the Journal of the proceedings of Monday, March 21, 1960, was dispensed with.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had passed the bill (S. 2482) to remove geographical limitations on activities of the Coast and Geodetic Survey, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate:

H.R. 3313. An act to amend section 200 of the Soldiers and Sailors Civil Relief Act of 1940 to permit the establishment of certain facts by a declaration under penalty of perjury in lieu of an affidavit;

H.R. 5055. An act to change a certain restriction on the use of certain real property heretofore conveyed to the city of St. Augustine, Fla., by the United States;

H.R. 7966. An act to amend section 601 of title 38, United States Code, to provide for the furnishing of needed services of optometrists to veterans having service-connected eye conditions;

H.R. 8868. An act for the relief of the Albertson Water District, Nassau County, N.Y.;

H.R. 9084. An act to repeal certain retirement promotion authority of the Coast and Geodetic Survey;

H.R. 9543. An act to revise the boundaries and change the name of the Stones River National Military Park, Tenn., and for other purposes;

H.R. 9921. An act to validate certain payments of additional pay for sea duty made to members and former members of the U.S. Coast Guard;

H.R. 10840. An act to amend Public Law 85–626 relating to dual rate contract agreements;

H.J. Res. 605. Joint resolution providing for the preparation and completion of plans for a comprehensive observance of the 175th anniversary of the formation of the Constitution of the United States; and

H.J. Res. 640. Joint resolution to authorize and request the President to issue a proclamation in connection with the centennial of the birth of General of the Armies John J. Pershing.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the President pro tempore:

S. 601. An act to authorize and provide for the construction of the Bardwell Reservoir;

S. 1712. An act to extend the application of the Motorboat Act of 1940 to certain possessions of the United States;

S. 2185. An act to provide appropriate public recognition of the gallant action of the Steamship *Meredith Victory* in the December 1950 evacuation of Hungnam, Korea;

S. 2483. An act to provide flexibility in the performance of certain functions of the Coast and Geodetic Survey and of the Weather Bureau; and

S.J. Res. 115. Joint resolution authorizing the purchase of certain property in the District of Columbia and its conveyance to the Pan American Health Organization for use as a headquarters site.

HOUSE BILLS AND JOINT RESOLUTIONS REFERRED

The following bills and joint resolutions were severally read twice by their titles and referred, as indicated:

H.R. 3313. An act to amend section 200 of the Soldiers and Sailors Civil Relief Act of 1940 to permit the establishment of certain facts by a declaration under penalty of perjury in lieu of an affidavit; and

H.R. 7966. An act to amend section 601 of title 38, United States Code, to provide for the furnishing of needed services of optometrists to veterans having service-connected eye conditions; to the Committee on Labor and Public Welfare.

H.R. 5055. An act to change a certain restriction on the use of certain real property heretofore conveyed to the city of St. Augustine, Fla., by the United States;

H.R. 9084. An act to repeal certain retirement promotion authority of the Coast and Geodetic Survey; and

H.R. 10840. An act to amend Public Law 85–626 relating to dual rate contract agreements; to the Committee on Interstate and Foreign Commerce.

H.R. 8868. An act for the relief of the Albertson Water District, Nassau County, N.Y.;

H.R. 9921. An act to validate certain payments of additional pay for sea duty made to members and former members of the U.S. Coast Guard;

H.J. Res. 605. Joint resolution providing for the preparation and completion of plans for a comprehensive observance of the 175th anniversary of the formation of the Constitution of the United States; and

H.J. Res. 640. Joint resolution to authorize and request the President to issue a proclamation in connection with the centennial of the birth of General of the Armies John J. Pershing; to the Committee on the Judiciary.

H.R. 9543. An act to revise the boundaries and change the name of the Stones River National Military Park, Tenn., and for other purposes; to the Committee on Interior and Insular Affairs.

LIMITATION OF DEBATE DURING MORNING HOUR

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that there be the usual morning hour, subject to a 3-minute limitation on statements.

The PRESIDENT pro tempore. Without objection, it is so ordered.

RESOLUTIONS OF GENERAL COURT OF COMMONWEALTH OF MASSACHUSETTS

Mr. SALTONSTALL. Mr. President, on behalf of myself, and my colleague, the junior Senator from Massachusetts [Mr. KENNEDY], I present, for appropriate reference, resolutions adopted by the General Court of the Commonwealth of Massachusetts, relating to the inclusion of health insurance coverage as part of social security benefits.

There being no objection, the resolutions were referred to the Committee on Finance, and, under the rule, ordered to be printed in the RECORD, as follows:

RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT THE FORAND BILL TO PROVIDE HEALTH INSURANCE COVERAGE AS PART OF SOCIAL SECURITY BENEFITS

Whereas the Forand bill now pending before the Congress of the United States provides health insurance coverage as part of social security benefits thereby providing 9 out of 10 people 65 years of age and over with health and hospitalization benefits as part of their social security benefits, said benefits to be paid for by the beneficiaries during their working years; and

Whereas said bill has the endorsement of many medical and hospital authorities and is considered essential to meet the growing need for more adequate medical care for elderly people: Therefore be it

Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to give early and favorable consideration to the enactment of the Forand bill providing health insurance coverage as part of social security benefits; and be it further

Resolved, That copies of these resolutions be sent forthwith by the secretary of the Commonwealth to the Senators and Representatives in Congress from this Commonwealth.

Adopted by the house of representatives February 29, 1960.

LAWRENCE R. GROVE,
Clerk.

Adopted in the senate in concurrence March 2, 1960.

IRVING N. HAYDEN,
Clerk.

Attest:

JOSEPH D. WARD,
Secretary of the Commonwealth.

RESOLUTIONS OF ORGANIZATIONS IN THE STATE OF NEW YORK

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD two resolutions, one adopted by the town board of the town of Rotterdam, N.Y., relating to additional scholarships in the field of science and engineering, and the second adopted by the Medical Society of Montgomery County, N.Y., relating to governmental control of the practice of medicine.

There being no objection, the resolutions were ordered to be printed in the RECORD, as follows:

RESOLUTION BY TOWN BOARD OF ROTTERDAM, N.Y.

Whereas legislation has been introduced in Congress that would set aside and invest $100 million in World War II enemy war assets seized from Germany and Japan with the interest thereon to be used for the establishment of 2,000 additional scholarships in the field of science and engineering; and

Whereas although priority and preference in the awarding of the aforementioned scholarships will be given to children of veterans of World Wars I and II and the Korean conflict, nonveterans will also be eligible for the award: Now, therefore, be it

Resolved, That the Town Board of the Town of Rotterdam urge the passage and enactment into law of U.S. Senate bill No. 105 as a positive step in strengthening and broadening additional programs in science and engineering; and be it further

Resolved, That copies of this resolution be transmitted to U.S. Senators KENNETH B. KEATING and JACOB K. JAVITS and Congressman SAMUEL S. STRATTON.

RESOLUTION BY THE MEDICAL SOCIETY OF THE COUNTY OF MONTGOMERY, N.Y.

Whereas efforts to place the practice of medicine under governmental control are increasing each year; and

Whereas amendments to the social security law are the favorite instruments for those who favor governmental medicine; and

Whereas the Forand bill (H.R. 4700) is the 1960 version of the continuing efforts of the proponents of governmental medicine; and

Whereas the bill would set up a system whereby a Federal agency would set arbitrary standards for medical care and dictate fees and charges; and

Whereas the doctor-patient relationship would be seriously impaired, if not destroyed; and

Whereas it would put the Federal Government into an area of health care with which it is not equipped to cope; and

Whereas it would be most difficult if not impossible to provide the best medical care under a Government-dominated program, which the passage of the Forand bill, or any bill of a similar type would bring about: Now, therefore, be it

Resolved, That the members of the Montgomery County Medical Society marshal all their resources for the purpose of preventing the enactment of the Forand bill, or any bill of a similar type; and be it further

Resolved, That a copy of this resolution be sent to Congressman SAMUEL S. STRATTON, Senator JACOB K. JAVITS, Senator KENNETH B. KEATING, and Hon. WILBUR MILLS, chairman, Ways and Means Committee, House of Representatives.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. YOUNG of North Dakota:

S. 3250. A bill to authorize the Secretary of the Interior to provide water and sewage

disposal facilities to the Medora area adjoining the Theodore Roosevelt National Memorial Park, N. Dak., and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. JAVITS:

S. 3251. A bill to amend the Internal Revenue Code of 1954 to encourage private investment abroad in less developed areas and thereby promote American industry and reduce Government expenditures for foreign economic assistance in such areas; to the Committee on Finance.

S. 3252. A bill relating to the furnishing of assistance in financing economic development projects carried on by private enterprise in foreign countries; to the Committee on Foreign Relations.

(See the remarks of Mr. JAVITS when he introduced the above bills, which appear under a separate heading.)

By Mr. TALMADGE:

S. 3253. A bill to amend subchapter B of chapter 12 (relating to transfers for gift tax purposes) of the Internal Revenue Code of 1954; to the Committee on Finance.

By Mr. ANDERSON (for himself and Mr. DWORSHAK):

S. 3254. A bill to authorize the Secretary of the Interior to permit the occupancy and use by the Congressional Club of certain lands in the District of Columbia which are under the jurisdiction of the National Park Service; to the Committee on Interior and Insular Affairs.

By Mr. RANDOLPH (for himself and Mr. BYRD of West Virginia):

S. 3255. A bill to amend title II of the Social Security Act to increase to $1,800 the annual amount individuals are permitted to earn without deductions being made from the insurance benefits payable to them under such title; to the Committee on Finance.

By Mr. MORSE:

S. 3256. A bill to authorize the establishment of a National Showcase of the Arts and Sciences in the District of Columbia to encourage young American artists and scientists; to authorize the holding of an International Olympiad of the Arts and Sciences on a biennial basis in the District of Columbia and thus to enhance the prospects of a durable peace; and for other purposes; to the Committee on Labor and Public Welfare.

(See the remarks of Mr. MORSE when he introduced the above bill, which appear under a separate heading.)

By Mr. BIBLE (by request):

S. 3257. A bill to amend the District of Columbia Traffic Act, 1925, as amended, to increase the fee charged for learners' permits; to the Committee on the District of Columbia.

By Mr. BIBLE (for himself and Mr. BEALL) (by request):

S. 3258. A bill to amend the District of Columbia Alcoholic Beverage Control Act; to the Committee on the District of Columbia.

FOREIGN BUSINESS CORPORATIONS

Mr. JAVITS. Mr. President, I am today introducing two bills to encourage U.S. investors to establish businesses in the less-developed areas of the free world now receiving aid under the mutual security program. These businesses would be called foreign business corporations—FBC's—and operate under a system of tax deferrals designed to stimulate U.S. private investment in less-developed nations. Many of the provisions in this proposed legislation are the counterpart to sections of H.R. 5, introduced by Representative HALE BOGGS, Democrat, of Louisiana, scheduled for consideration by the House of Representatives in the near future.

Though they seek the same objective, my bills carry out the recommendations of the so-called Straus report, made to the State Department as the result of an amendment I sponsored to the Mutual Security Act of 1958. The report was entitled "Expanding Private Investment for Free World Economic Growth."

I predict that in the next campaign foreign economic policy will be one of the major issues before our country, both as it concerns our imbalance in international payments and as it concerns our exports and imports.

There is no way in which we can buck up the amount of economic development of the less-developed areas of the free world unless we enlist American free enterprise in the process. This is one of the free world's greatest problems.

Let us remember that the Russians are rivaling us now with a program estimated at $700 million.

I am also introducing legislation which would allow the Development Loan Fund to purchase equity securities, thus increasing the number of private enterprises eligible for DLF financing. The entire legislative package represents direct implementation of almost all the major recommendations requiring legislative action contained in the special State Department report on "Expanding Private Investment for Free World Economic Growth"; prepared under the direction of Ralph Straus and issued in April 1959, this report was the result of an amendment to the Mutual Security Act offered by me in 1958.

Measures to expand direct U.S. private oversea investment should be classified as long-range insurance against any prolonged deficit in our balance-of-payments picture. From 1950 to 1958, $16 billion flowed back into the United States as earnings on private oversea investment—a net gain of $7 billion over the direct outflow during the same period. In 1958, when U.S. exports slumped by $3 billion, our earnings on private oversea investment held remarkably steady at $2.2 billion and alone kept our balance-of-payments deficit from dipping an additional $1.1 billion.

In the newly developing countries, private U.S. investors can advance U.S. foreign policy through stimulating the growth of the private sector of their economies which must be strengthened if free political and economic institutions are to survive. This legislation is designed to project the best elements in U.S. private enterprise into the less-developed areas introducing their peoples to the competitive energy, initiative, inventiveness, technology, managerial skill, and credit that we have to offer in such abundance, while these investments aid in the growth of new mass production and consumption in these areas eager for U.S. goods.

The entire package of proposals giving tax incentives to investors in the less developed areas would permit U.S. industry to meet foreign competitors on more even terms. There are 72 countries now give preferential tax treatment to income earned in foreign countries; 26 of them do not tax foreign-earned income at all, and 13 countries provide for tax deferment similar to this bill. For example, private investors in the United Kingdom, which has a system of oversea trade corporations similar to the proposed FBC's, were able to make new direct investments in less developed nations three times greater than U.S. investors, in proportion to the gross national product of the United Kingdom and the United States.

One of the key tax proposals would permit deferral on the earnings of a foreign business corporation until they are distributed among stockholders in the United States, and in the case of other U.S.-owned enterprises in developed countries, reinvestment of their earnings in FBC's operating in less developed areas will also make them eligible for the same tax deferral arrangement.

One of the free world's most pressing problems demanding the joint partnership efforts of all our industrialized countries is how to increase the financial resources available as development capital in Africa, Latin America, the Mideast, and parts of Asia. We estimate that about $4 billion a year represents the total net development assistance, public and private, by the West currently available in less developed nations—as compared with the average of $700 million annually in Soviet aid to non-Communist underdeveloped areas. We are spending about $3.20 for each person living in them, while the Russians are investing roughly 56 cents per capita. But the rate of progress is not acceptable to these peoples. Living standards are inching forward about 1 percent annually, and in actuality they are fighting a holding action trying to keep their standards from slipping backward in the face of predictions of population increases.

However, if maximum use were made of these proposed amendments on tax deferral of reinvested earnings in these underdeveloped areas, an amount equivalent to the entire Soviet economic aid program — $700 million — conceivably could be channeled into them. I would hope that double that amount in new investment would become available because of these amendments, including the one establishing foreign business corporations. Another corollary effect of creating the FBC's may well be to encourage U.S.-owned, foreign-based companies located in low-tax countries like Switzerland, Panama, Venezuela, Liberia, and the Bahamas to return to the United States as foreign business corporations, thus remitting millions of earnings to the United States and increasing Treasury revenues.

Another amendment in the package would permit capital losses by a foreign business corporation to be passed on to the stockholder who can list them as a tax deduction against ordinary income, similar to the provision already operating in the Small Business Investment Act. Also, there is a provision permitting tax deferral on payments in stock or proprietary interest for technical aid to business in less developed countries.

Regarding these two amendments, the first would do much to remove a major

fear of U.S. private investors that a political upheaval may hand them a total loss on investments in a less developed area. This amendment should encourage them to take that risk more often, knowing that it can be written off against earnings on successful investments, thereby encouraging dollar inflow into potentially valuable enterprises which will help in the development of these areas and actually contribute to political stability. The second amendment dealing with the investment of technical services has the psychological benefit of alining U.S. business in close partnership with local enterprise in a less developed foreign country and is an investment which involves no capital outflow from the United States, but nonetheless does yield a dollar return, again brightening our balance-of-payments picture.

The three amendments to the Mutual Security Act would give the Development Loan Fund the authority to, first, purchase equity securities in private enterprise in newly developing countries from its own funds; second, purchase equity securities in private enterprises in these same countries out of Public Law 480 funds; and, third, make loans from Public Law 480 funds to private enterprises owned by U.S. citizens living in foreign countries and to businesses in which U.S. citizens own at least 10 percent of the voting stock.

These amendments should allow us to get maximum mileage out of our public investment funds now under the direction of the Development Loan Fund, which present has $450 million in uncommitted funds and has pending a request for a $700-million authorization under this year's mutual security program. It would also make available several hundreds of millions in Public Law 480 funds to bolster that effort. All three amendments broaden the scope of private enterprise functions which would be eligible for DLF financing and should increase the overall effectiveness of our public program for promoting free world economic growth, especially in the less developed areas.

I hope very much that whatever is done in the other body, this body will give immediate and urgent attention to this problem.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point as a part of my remarks a reply to me from the Department of Justice, dated June 17, 1959, but which I have updated by communicating with the Department, which tells me that its answer is just as good today as it was then.

The reply relates to the antitrust policy of the United States when it comes to private investments abroad by companies which are under some elements of legal or quasi-legal compulsion or business necessity in assessing the legality of a foreign arrangement under the antitrust laws, as to whether the acts they would be performing in their investments and operations abroad would conform to the antitrust laws of the United States.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF JUSTICE,
Washington, December 9, 1959.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR JAVITS: This is in response to your letter of December 2, 1959, concerning the State Department report on "expanding private investment for free world economic growth."

In my letter of June 17, 1959, to which you refer, I stated that the Department of Justice is generally in accord with the recommendations of that report on the subject of the antitrust laws and foreign investment. This Department continues to have the views expressed in that letter. Our liaison procedure with the Department of State, mentioned therein, with reference to proposed antitrust actions and suits which might affect foreign policy, as well as international restrictive practices generally, is presently in effect with very satisfactory results.

Sincerely yours,

ROBERT A. BICKS,
Acting Assistant Attorney General, Antitrust Division.

DEPARTMENT OF JUSTICE,
Washington, June 17, 1959.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR JAVITS: This is in reply to your letter of May 27, 1959, to the Attorney General, acknowledged on June 3, 1959, with respect to the antitrust recommendations contained in the report on "expanding private investment for free world economic growth." This report was prepared under the direction of Ralph I. Straus, as Special Consultant to the Under Secretary of State for Economic Affairs, pursuant to section 413(c) of the Mutual Security Act of 1954, under an amendment which you proposed to the Senate.

We have been much interested in this report and I, with Mr. Fugate of the Antitrust Division staff, participated in a discussion with Mr. Straus and his group on the particular subject of Antitrust and Foreign Investment. This consultation which Mr. Straus conducted with those in the Government particularly interested in antitrust matters and with experts in the antitrust field in private practice, was extremely helpful to all concerned.

We were pleased to note that Mr. Straus and his group endorsed continued U.S. opposition to international cartels and monopolies and affirmed the public interest in enforcing the antitrust laws with respect to U.S. foreign trade. The Straus group discussions emphasized the necessity of preserving our free enterprise system in American foreign investment as a matter of great importance in projecting the proper "image of the United States" in the conflict with the regimentation of Communist economic efforts. The report also stresses that "agreements that curtail developing countries' export or investment potentials are directly opposed to our objectives of economic growth," and that artificial barriers to trade would place at a disadvantage small or medium size private American businesses abroad, so that they could be easily foreclosed or excluded from the market by restrictive or monopolistic practices on the part of larger rivals.

We have given careful consideration to the recommendations on antitrust contained in the Straus report, all of which were discussed thoroughly in the consultations in which we participated. We have the following comments upon these recommendations.

RECOMMENDATION NO. 1

We recommend authoritative indication of the extent to which the Department of Justice will take into account elements of legal or quasi-legal compulsion or business necessity in assessing the legality of a foreign arrangement under the antitrust laws.

The Department of Justice, before instituting action under the antitrust laws with respect to activities in foreign trade, does take into consideration the entire factual situation including elements of compulsion in any foreign countries involved. Recommendation No. 1 apparently contemplates two separate situations: first, where participation in a restrictive arrangement is required of an American firm by foreign laws or regulations, and second, where an arrangement is inspired by local custom or by special circumstances in a foreign country that may amount to business advisability.

It is our view that, absent any larger conspiracy, a requirement of foreign law is usually a justification under our antitrust laws for restrictive arrangements abroad to the extent that such activities are carried on entirely within the bounds of a foreign country. There is, of course, a fundamental difference between public regulation by a foreign government and private regulation exerted by a group of companies in a foreign country. Also difficult is drawing the line between business "convenience" and "impossibility" of doing business otherwise. Many of these problems are treated, in part, via comments on Recommendation No. 3, both with respect to compulsion exerted directly or indirectly by a foreign government and compulsion exerted by a private group of companies in a foreign country. It should be borne in mind also, as the Report of the Attorney General's National Committee to Study the Antitrust Laws has pointed out that the Sherman Act "applies only to those arrangements between Americans alone, or in concert with foreign firms, which have such substantial anticompetitive effects on this country's 'trade or commerce * * * with foreign nations' as to constitute unreasonable restraints" (p. 76).

RECOMMENDATION NO. 2

We recommend clarification of and more information concerning the willingness of the U.S. Government to consider in advance the legality under antitrust laws of proposed investments abroad.

We note that the Straus group does not favor "advance clearance as a matter of routine procedure for foreign transactions," saying that this would not be a healthy thing either for the business community or for antitrust enforcement. We assume, from the comments on page 30 of the report, that this recommendation is more of a suggestion that the business community be informed of and take advantage of the limited clearance procedure now available in the Department of Justice with respect to foreign arrangements. The Department has taken every opportunity to publicize this procedure and we will continue to do so in the future. The availability of the procedure, the so-called "Railroad Release" letters, with respect to arrangements involving foreign trade may not be well known for it is true that while we have had several hundred requests for such letters, there have been very few relating to foreign trade. Of course, there are legal impediments to any real clearance program by the Department of Justice, since the Attorney General is not authorized to give legal opinions to private parties. These "Railroad Release" letters issued by the Department will only be given to a company which submits full information to the Department with respect to a proposed plan. The Department may then state as to the proposal submitted to it that, if it decides to test the

validity of the proposed plan in actual operation, it will forego criminal action. This procedure was adopted many years ago to mitigate business uncertainties in those areas where antitrust questions are highly doubtful as a matter of law, and previously undecided by a court. In each letter the possibility of Government civil action is carefully preserved.

RECOMMENDATION NO. 3

We recommend that, barring unusual circumstances, time should be permitted for consultation with representatives of the foreign government affected if the basis for the proposed antitrust action might be removed by negotiation or if advance notice might soften the impact on foreign opinion.

We believe that this recommendation has in it excellent possibilities for resolving many of the difficult problems in the foreign trade-antitrust field and this course of action is one to which the Departments of Justice and State have devoted much attention. There is now in effect a regular liaison procedure whereby the Department of Justice consults the Department of State with reference to proposed actions and suits which might affect the foreign policy of the United States. Mr. Becker, legal adviser of the State Department, recently suggested, in an address before the New York State Bar Association, that the Department of State should play a more active role than it has in the past in attempting to resolve problems or potential problems in the foreign relations field arising in the administration of the antitrust laws. He mentioned that the Department of State could do more in the way of affirmative consultation with the foreign government concerned, with the view of obtaining agreement that specific practices or arrangements are, or are not, contrary to our mutual interests. The discussions conducted by the Straus group on antitrust problems brought out the fact that sometimes restrictive measures by private companies in a foreign country affecting U.S. imports or exports would be contrary to international agreements if done directly by the foreign government.

We agree that discussions with a foreign government concerning particular restrictive activities affecting its trade or its nationals as well as our own should be extremely helpful to both governments. This procedure has indeed been followed in several antitrust cases. The recommendation of the Straus group, as indicated in the report, includes coordinating the railroad release program of the Department of Justice and the liaison procedure between the Departments of Justice and State. This, we think, would serve a useful purpose. For example, if the Department of Justice had a request for a railroad release with reference to a proposed restrictive foreign arrangement involving our trade where pressure to join was exerted on an American company, this matter could be passed on to the State Department for consultation with the foreign government.

To summarize, we are generally in accord with the recommendations of the Straus Committee on the subject of antitrust and foreign investment. We believe that intergovernmental discussion may be very helpful in dealing with the problem of business compulsion upon an American company in a foreign country whether exerted directly or indirectly by a foreign government or by a cartelized industry.

Sincerely yours,

ROBERT A. BICKS,
Acting Assistant Attorney General, Antitrust Division.

Mr. JAVITS. I also ask unanimous consent to have printed in the RECORD at this point as a part of my remarks an excerpt from the Straus report, which raises these challenging questions as one of the great elements which are interfering with American private investment abroad.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXPANDING PRIVATE INVESTMENT FOR FREE WORLD ECONOMIC GROWTH

V. ANTITRUST AND FOREIGN INVESTMENT

We recommend authoritative indication of the extent to which the Department of Justice will take into account elements of legal or quasi-legal compulsion or business necessity in assessing the legality of a foreign arrangement under the antitrust laws.

We recommend clarification of and more public information concerning the willingness of the U.S. Government to consider in advance the legality under antitrust laws of proposed investments abroad.

We recommend that, barring unusual circumstances, time should be permitted for consultation with representatives of the foreign government affected if the basis for the proposed antitrust action might be removed by negotiation or if advance notice might soften the impact on foreign opinion.

Mr. JAVITS. The end result of the reply of the Department of Justice is that there is no such inflexible barrier in the antitrust laws as many businessmen would have us suppose. On the contrary, there is every desire and every effort to negotiate each individual situation, depending upon the national interests, so that no businessman needs, solely on the advice of his lawyer, to say, "I am not going to move into operations abroad." He should go to the Department of Justice and discuss the situation. There are perfectly lawful ways, within the policy of the Department, for working out his problems.

The PRESIDENT pro tempore. The bills will be received and appropriately referred.

The bills, introduced by Mr. JAVITS, were received, read twice by their titles, and referred, as follows:

To the Committee on Finance:

S. 3251. A bill to amend the Internal Revenue Code of 1954 to encourage private investment abroad in less developed areas and thereby promote American industry and reduce Government expenditures for foreign economic assistance in such areas.

To the Committee on Foreign Relations:

S. 3252. A bill relating to the furnishing of assistance in financing economic development projects carried on by private enterprise in foreign countries.

NATIONAL SHOWCASE OF ARTS AND SCIENCES IN THE DISTRICT OF COLUMBIA

Mr. MORSE. Mr. President, I rise to introduce a bill which will fill a needed gap in the picture which foreign visitors, as well as the many tourists from our own country, feel when they visit the Nation's Capital—the capital of the most powerful nation in the free world. The gap I am referring to is perhaps more apparent than real. There are many cultural activities in the Nation's Capital, but many of them are insufficiently encouraged. Moreover, there is a real need for the Government to furnish leadership in providing more of them.

I am introducing this bill, which will parallel similar bills introduced in the House of Representatives. The bill will authorize the establishment of what is to be called a "National Showcase of the Arts and Sciences in the District of Columbia." The purpose of this showcase is to encourage young American artists and scientists to aid them in the performance and exhibition of the products of their work. The bill will further authorize the holding of an International Olympiad of the Arts and Sciences on a biennial basis in the District of Columbia.

The center for this program will be the Commissioner of Education, who shall act as a clearinghouse for all the activities authorized by this bill. The Commissioner of Education will have the benefit of the assistance and advice of an advisory committee, whose members shall be drawn from government, the field of arts, and the field of sciences. Members of the advisory committee will serve without compensation, except for expenses.

In the 83d Congress, the House of Representatives passed a bill, H.R. 7494, similar to the one I am now introducing. The bill will authorize the use of various auditoriums which might now be used for the general purposes set forth in the bill, and it is my hope that when the National Cultural Center is completed, its magnificent facilities will be made available. The exhibitions and performances to be presented will be largely developed with the aid of educational institutions and professional associations located throughout the Nation. The Biennial Olympiad also authorized by this bill will invite participation by the nations of the whole world in the spirit of the Olympiad now conducted in the field of sports.

The program envisaged by this bill will be without cost to the Government. Financial dependence for the exhibitions, productions, programs, and so forth, will be borne by private institutions. Section 7(b) of the bill authorizes the Commissioner of Education to receive contributions from any source to assist in carrying out the programs and activities authorized by the bill. Such contributions shall be held by the Treasury in a special fund, and the transactions of the Commissioner of Education shall be audited by the Comptroller General. In brief, I am not proposing a subsidized program. I am proposing, instead, machinery to utilize the resources which are available now.

Mr. President, the scientists and artists of America have no reason for apology. Their accomplishments are hailed throughout the world, and are recognized by those citizens of other countries who have similar interests and aspirations. On the other hand, the public image of the United States, in many countries of the world, fails to include a true appreciation of our interest in the arts and pure sciences. We are recognized as a nation of material accomplishment and efficiency, not as a nation of the spirit. It seems to me that

this misleading impression should be dispelled. I, therefore, introduce this proposed legislation, for appropriate reference, with the hope that it will be acted upon quickly in the public interest. I ask unanimous consent that the bill be printed in the RECORD.

The PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 3256) to authorize the establishment of a National Showcase of the Arts and Sciences in the District of Columbia to encourage young American artists and scientists; to authorize the holding of an International Olympiad of the Arts and Sciences on a biennial basis in the District of Columbia and thus to enhance the prospects of a durable peace, and for other purposes, introduced by Mr. MORSE, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to encourage the further development and growth of the arts and sciences in American educational institutions and to strengthen the bonds which unite our people with the people of all other nations to the end that the prospects of a durable peace may be enhanced, there is hereby authorized to be held in the District of Columbia conferences, exhibitions, production, festivals, competitions, and programs of educational institutions as provided in this Act. As used in this Act the term "American educational institution" means an educational institution located in a State, the District of Columbia, Puerto Rico, or a possession of the United States.

SEC. 2. Upon the request by the Commissioner of Education for such information, the head of each department and agency of the Federal Government, the Board of Commissioners of the District of Columbia, and the Recreation Board of the District of Columbia shall inform the Commissioner of Education of facilities under its jurisdiction in the District of Columbia which it will make available for conferences, exhibitions, productions, festivals, competitions, and programs presented pursuant to the provisions of this Act. Such facilities shall include, but not be limited to, the White House, the Carter Barron Amphitheater, the Watergate Amphitheater, and the auditoriums and exhibition areas of the National Gallery of Art, the National Cultural Center, the Smithsonian Institution, the Library of Congress, the Lafayette Square Opera House (which shall be transferred to the Recreation Department of the District of Columbia, renovated by it and used for such purposes and educational and recreational activities in the arts and sciences), the Interdepartmental Auditorium, the National Archives Building, the Departments of State, Interior, Agriculture, Commerce, and Health, Education, and Welfare, and the secondary schools of the District of Columbia.

SEC. 3. The Commissioner of Education shall select and arrange for the presentation of significant, high quality conferences, exhibitions, productions, festivals, competitions, and programs in the fields of the arts and sciences of American educational institutions in suitable facilities in the District of Columbia which are made available pursuant to section 2 of this Act, including the performance of services incidental thereto, and these programs and activities shall be referred to as the National Showcase of the Arts and Sciences.

SEC. 4. In carrying out the provisions of this Act the Commissioner of Education may make arrangements, including contracts, with suitable educational institutions, organizations, and individuals (1) to handle the business management and all technical work related to conferences, exhibitions, productions, festivals, competitions, and programs of educational institutions, and (2) to promote public attendance, when, in his judgment, this is necessary to carry out the purposes of this Act.

SEC. 5. (a) An International Olympiad of the Arts and Sciences shall be held biennially in the District of Columbia in the facilities made available pursuant to section 2 of this Act in conjunction with the activities carried out under section 3 of this Act. Each International Olympiad of the Arts and Sciences shall consist of exhibitions, productions, and programs of American educational institutions judged by the Commissioner of Education and a competent jury (which shall consist of distinguished judges invited by him to act in this capacity) to be outstanding; and exhibitions, productions, and programs, and so forth, of foreign nonprofit educational institutions and organizations subvened financially in whole or in part by the countries in which such educational institutions and organizations are located or political subdivisions thereof. Foreign students and teachers of such institutions who are in the United States and are assisted by any cultural or exchange of persons program administered by the Department of State shall be encouraged and invited to participate in the International Olympiad of the Arts and Sciences.

(b) The Secretary of State, after consultation with the Commissioner of Education, shall, at appropriate times, extend invitations to nonprofit educational institutions and organizations in foreign countries which are eligible to participate in International Olympiads of the Arts and Sciences held pursuant to subsection (a) of this section.

SEC. 6. There is hereby established an advisory committee to advise and assist in the development and administration of the programs and activities authorized by this Act. Such advisory committee shall consist of the Commissioner of Education, who shall be chairman; the Director, Bureau of International Cultural Relations, Department of State and the Director, United States Information Agency, who shall be vice chairmen; and sixty members appointed by the Commissioner of Education from among persons nominated by educational organizations, thirty of whom shall be drawn from the fields of the arts, and thirty of whom shall be drawn from the fields of the sciences. Each member of the advisory committee appointed by the Commissioner of Education shall hold office for a term of four years; except that (1) of the members first appointed thirty shall hold office for a term of two years, and thirty shall hold office for a term of four years, from the date of enactment of this Act; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Members of the advisory committee shall serve without compensation, but each member of such committee shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in connection with the work of such committee.

SEC. 7. (a) The Commissioner of Education shall use the proceeds, if any, from the programs and activities authorized by this Act to (1) carry out the provisions of this Act, and (2) assist in providing appropriate prizes for original creative work presented pursuant to the provisions of this Act.

(b) The Commissioner of Education is authorized to receive contributions of money, materials, and other property from any source to assist in carrying out the programs and activities authorized by this Act. Any contributions of money so received, or funds realized from the sale of property or other gifts, shall be covered into the Treasury to the credit of a special fund which shall be available to the Commissioner of Education for carrying out the programs and activities authorized by this Act. The financial transactions of the Commissioner of Education under this Act shall be audited at least once a year by the Comptroller General of the United States in accordance with such rules and regulations as may be prescribed by the Comptroller General.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE RECORD

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the RECORD, as follows:

By Mr. HRUSKA:

Statement by him before U.S. Tariff Commission on lamb and mutton imports into the United States, March 22, 1960.

By Mr. WILEY:

Article entitled "Sound Economics Can Make Good Politics," written by him, published in the American Bar Association Journal of March 1960.

DECLINE IN THE INTEREST RATE ON GOVERNMENT BONDS

Mr. DOUGLAS. Mr. President, yesterday the interest rate on short-time Government securities fell again. In December 1959, it averaged 4.572 percent on 91-day bills. The rate on 6-month bills was as high, in early January, as 5.099. The administration was vehement in demanding that the 4¼-percent ceiling be removed; and those of us who opposed that demand were subjected to bitter denunciation.

Then the short-time rate began to fall slightly, to an average of 4.436 in January; but the administration became even more insistent. Then, on February 13, the 91-day rate slipped to 3.563 percent, although it rose subsequently. But still the administration demanded removal of the ceiling.

In the last 2 weeks the decline has been precipitous. On March 7, the interest rate was 3.64 percent for 91-day bills; and on March 14, the rate was 3.451 percent. Yesterday, the rate on the issue of $1,200 million of 91-day bills was only 3.033 percent. The decline in the rate on the 182-day bills was proportionately even greater; it went down from 5.099, as I have mentioned, during the first week in January, to 3.619 percent last week. Yesterday, the rate fell to 3.176 percent, or a decline of approximately three-eighths of the total rate from its December high.

During this period the yield on long-term Governments has also been declining, although not, of course, so sharply, because the rates on the long-term bonds are not as volatile as are those on the short-term bonds. Yesterday, I reported that the arithmetic average yield or true interest rate of the 26 outstanding long-term issues as of last Friday was 3.96 percent. More

precisely, it was 3.955 percent. There was a further very slight decline yesterday, to 3.953 percent. But I believe we should realize that every one of the 26 issues has a yield below the 4.25 percent ceiling which the administration wants removed, while no less than 10 issues were below 4 percent.

Last week the Treasury was still demanding that the ceiling be removed. It will be interesting to see whether the Treasury still continues to make this demand. It will also be interesting to see by how much the interest rate will have to fall before the Treasury will abandon its plans to saddle a high-interest-rate issue upon the American taxpayers, and, instead, will reconcile itself to economic realities.

Mr. YARBOROUGH. Mr. President, will the Senator from Illinois yield?

Mr. DOUGLAS. I am very glad to yield to the able junior Senator from Texas, who has been deeply interested in this whole matter.

Mr. YARBOROUGH. Mr. President, I desire to commend the Senator from Illinois and the other Members who have been helping him—the senior Senator from Pennsylvania [Mr. CLARK], the junior Senator from Tennessee [Mr. GORE], and the junior Senator from Oklahoma [Mr. MONRONEY]—for their continued, highly intelligent, and highly active fight against the spiraling high-interest-rate, hard-money policy, of the present administration. I think nothing better illustrates the value of the fight they have made than the recent persistent and steady decline in the interest rates on Government bonds. Many Members believe that without the fight which these distinguished Senators have made, the line would not have been held this long against the efforts of the administration to have the interest ceiling on Government securities removed. Without the determined fight which these very able Senators have made, doubtless the Secretary of the Treasury would already have received the authority the administration has requested to increase the interest rate on long-term Government bonds from 4¼ percent to 5 percent.

But these courageous Senators have held the line until the market reacted as they predicted it would; and now we see that the interest rate increase the administration has so persistently requested is not needed to make the bonds marketable.

Furthermore, if the Secretary of the Treasury would simply say that he would no longer ask that the ceiling on the interest rate on long-term Government securities be removed, undoubtedly the interest rate would fall still farther.

In my opinion, one factor that has held up the interest rates has been the thought of those who otherwise would have been purchasing Government bonds, that if they would simply postpone their purchases, if they would hold onto their funds a while longer, and "keep them in the sock," the need of the Government to sell its bonds would result in a rise in the interest rate. Accordingly, those who have funds to invest in bonds have postponed their purchases. However, despite that fact, in recent months the interest rate has steadily declined, until today, as the Senator from Illinois has pointed out, the rate is below 4 percent.

With the Federal public debt approaching $300 billion, we can easily calculate that a decline of three-fourths of 1 percent in the interest rate, if applied across the board, would result in a saving of $2,250 million in the interest bill the Federal Government must pay on its debt; and a 1 percent decline in the rate would mean that the saving to the Government on the interest charge on the Government debt would amount to $3 billion a year.

Mr. President, I do not believe that anyone doubts that if a break through on the interest rate ceiling were to occur and the rates go still higher, the result would be most harmful to both public debt and private debt; there would be another spiral in the interest rate and another round of interest-rate increases, and another inflationary spiral of price increases.

The PRESIDENT pro tempore. The time available to the Senator from Illinois, under the 3-minute limitation in the morning hour, has expired.

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that the further time I wish to use shall be charged to the time available to me during the morning hour.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. YARBOROUGH. Mr. President, the determined action taken by our courageous colleagues is resulting in savings of billions of dollars a year in the interest charge on the public debt, and in the saving of even more billions of dollars a year on private indebtedness in the United States.

So I wish to express my profound appreciation to the distinguished Senator from Illinois [Mr. DOUGLAS] and to the other distinguished Members who have been associated with him in this courageous and persistent fight. The Senator from Illinois is a distinguished economist, and all of us are deeply grateful to him for the leadership he has been giving in the fight to hold down the interest rates.

Mr. DOUGLAS. Mr. President, I ask unanimous consent that at this time I may speak for 1 minute, in order to have time in which to reply to the Senator from Texas.

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. DOUGLAS. Mr. President, I wish to say that no one has been more valiant in this struggle than has the junior Senator from Texas [Mr. YARBOROUGH]. I believe that the results of our effort will vindicate it. Last fall, the Under Secretary of the Treasury announced that the Government intended to refund $20 billion of Government securities into long-term securities; and at the same time the Treasury floated a 4-year and 10-month issue at 5 percent—the "fabulous 5s," so-called—which now are selling at over a 3-percent premium.

So that in the long run, although not necessarily in each year, I think we have saved billions of dollars for the taxpayers. And I am very curious to see what the Federal Reserve, the administration, and the financial writers say about these developments.

Again I want to thank the Senator from Texas, and say no one deserves more credit in this effort than he does.

Mr. BUSH. Mr. President, the Senator from Illinois might be interested in what I expect to say, if I could attract his attention, because I intend to mention his name at least, and call attention to what he said yesterday, when he stated that the wealthy investors who are able to get hold of the high-interest rate issues have made a killing of hundreds of millions of dollars.

Mr. President, I submit that is a misleading statement. The investors who bought the so-called "magic 5s" were not wealthy investors, but were, principally, people with money in savings banks.

It happened that last October, when this issue was made, I was at a savings bank convention in Virginia. The savings bankers were very much concerned about the savings withdrawals by small savers who were putting their money into the 5 percent notes. There were more than 100,000 individuals who bought those notes, and that was a greater number of people—individuals, small savers—who bought bonds on the Government bond market than at any time since World War I.

So I submit it is not quite fair to the Treasury to say that it was wealthy investors who made a killing on these bonds. The savers of this country have discovered the Government bond market, and have withdrawn money from their savings accounts to buy Government obligations.

Mr. President, on this subject, since there have been several remarks made about it in the last few days, and the Senator from Illinois has commented on it again today, I wish to point out that practically every group that knows anything about this situation in the financial world has come to the conclusion that the ceiling on long-term bonds should be lifted. The most recent statement to that effect was made by the National Association of Homebuilders; we have also had such an opinion expressed from the National Retail Lumbermen's Association; and last fall we had such an expression from the National Association of Real Estate Boards. We have also had that advice from every leading financial institution in the country, the savings and loan associations, the savings bankers associations; and when the International Monetary Fund had its meeting here last September, the one thing the representatives of some 69 countries from all over the world could not understand was how the U.S. Congress could tie the hands of the Treasury, force it to go into the short-term money market, and prevent it from issuing long-term bonds. They thought that was the height of folly, and they could not understand it. They were given to hope, I think, when they were here, that the

Treasury would be accorded the privilege of issuing long-term bonds when this Congress came back into session.

Now it appears there is a determined move afoot to prevent that. I say to my friends across the aisle that they are gambling. There is a new set of gamblers in the security market. They are speculating with the national credit. Upon that national credit depends the security of this country and the security of the whole free world. I say it is a reckless thing to do.

I say it is reckless to speculate with this issue because they think they have a "hot" political issue. I say to my colleagues and to my friends in the other body that it is the most dangerous speculation I have seen since I have been in the United States Senate. I beg them to drop this issue, and to give the Treasury the opportunity to finance this Government's needs with free hands, and not have its hands tied behind its back.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. BUSH. Mr. President, I ask unanimous consent to continue for another 2 minutes on this point.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. BUSH. Mr. President, regarding the purchases of the 5 percent bonds, I ask unanimous consent that the list which I have in my hand of the subscribers to these bonds, which were issued last October, totaling $2,316 million, be placed in the RECORD at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BUSH. Mr. President, I ask unanimous consent that an editorial which appeared in the Wall Street Journal today be printed in the RECORD at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BUSH. Finally, Mr. President, I ask unanimous consent that an editorial which appeared in the Journal of Commerce today, March 22, 1960, entitled "Out of the Blue," be also printed at the conclusion of my remarks, as having a bearing on this situation.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 3.)

Mr. BUSH. Mr. President, the reason why interest rates have come down and the situation exists as my able friend from Illinois has said in the last 2 or 3 days has been due to the very simple fact that there has been an easing off in business in many lines. There has been a slight recession in business. The records show it. Retail sales are off. Automobile sales are slow.

I see no reason for rejoicing that interest rates are down because business is off temporarily. I think that is an unhappy fact, and nothing to be rejoicing about.

I think also that if Congress does not do something about this question before it adjourns for the summer, it is going to place the United States in an exceedingly difficult position for taking care of the needs of the Government and for preserving the credit of the Government and for fighting inflation, particularly, in the future. It appears that we are going to enter another period of very active business, in which money is going to be very much in demand, and interest rates are very apt to firm up and reach a higher level than their present level.

So, Mr. President, I plead sincerely and earnestly with my friends across the aisle, both here and in the House of Representatives, to drop this silly issue, and give the Treasury of the United States the freedom that any other government, of any responsibility, gives to its treasury in connection with the financing of Government operations.

EXHIBIT 1

ALLOTMENTS BY INVESTOR CLASSES ON SUBSCRIPTIONS FOR 5-PERCENT TREASURY NOTES ISSUED OCTOBER 15, 1959

In the issue of 5-percent notes sold last October, more than 100,000 individual subscribers—mainly small investors—subscribed for and were allotted more than $750 million of the securities. Subscriptions by the large financial institutions were rigidly limited by the Treasury.

The amounts allotted to various classes of subscribers were as follows: [1]

Commercial banks	$587,000,000
Individuals	778,000,000
Insurance companies	148,000,000
Mutual savings banks	138,000,000
Corporations	91,000,000
Private pension and retirement:	
Funds	107,000,000
State and local governments	80,000,000
Dealers and brokers	58,000,000
U.S. Government investment accounts and Federal Reserve banks	100,000,000
All other	229,000,000

EXHIBIT 2

[From the Wall Street Journal, Mar. 22, 1960]

WHERE THE SHOE PINCHES

The National Association of Home Builders, we see by a letter to its members, has found out that it makes a lot of difference where the shoe pinches.

For many months now Secretary Anderson has been trying to persuade Congress to change the law which forbids the Treasury to pay more than 4¼ percent interest on long-term Government bonds. The chief opposition has come from those who say that, while this might make things easier for the Treasury Secretary, it would be a severe blow to ordinary folk who have to borrow money on long terms, such as on mortgages. Aren't mortgage rates already high enough without the Treasury pushing them higher?

So the Democrats in Congress, who profess a deep concern about home buyers and the building industry, have told Mr. Anderson "No." If he's pinched for funds, let him stick to the short-term market.

But now the homebuilders have had some second thoughts. The association has just called on all members to write their Congressmen at once giving "strong support" to a change in the interest-rate limitation "at the earliest possible date." If the change isn't made quickly, say the homebuilders, it "could well mean tighter mortgage money and higher interest rates."

Behind this about-face is an interesting lesson in the economics of interest. It's one that might even be instructive to the self-styled liberal Democrats in other ways, too.

The basic situation here can be described fairly simply. Because of the tremendous demand for the Nation's lendable funds, from both private and governmental borrowers, the price of money has been pushed up. Uncle Sam may offer to pay 4¼ percent interest, but no lenders come forward for the reason that they can already lend their money elsewhere at a higher rate.

So with long-term money already "tight," the first reaction of many people was that to permit the Government, with its huge borrowing needs, to raise its interest bid would simply make the long-term money supply even tighter. The Government, so the argument ran, would then be competing even more directly with would-be mortgage borrowers, interest rates would rise further, people wouldn't be able to buy homes, the building industry would fall into the doldrums and that would injure the whole economy.

Of course this train of thought, however persuasive to the unsophisticated, overlooked one little detail. The U.S. Treasury had to get the money from somewhere, billions of it. And if it couldn't spread its borrowing over the long-term market, it had to borrow all the billions on the short-term market where there was no interest limit fixed by law.

What happened then was unforeseeable only by the kind of "liberal" Congressman who thinks statutory law will repeal the actual laws that govern economic affairs.

When the Treasury was forced to borrow its billions on short-term notes alone, short-term interest rates went skyrocketing. Last fall the Treasury had to pay 5 percent for notes maturing in less than 5 years. So, not unnaturally, people who had money in savings banks and building associations at much less interest, drew out their money and bought the Treasury notes.

Hence the home builders discovered that "the Treasury's unavoidable financing activities are draining money out of the very institutions on which we must rely for mortgage credit." And they concluded that if the Treasury isn't permitted to meet the going interest rates in the long-term market, where it can spread its debt around, "we are all going to suffer severely."

So there you are. Those who refused to let the Treasury deal sensibly with the realities of the marketplace have brought about the very thing they professed they would avoid.

The political lesson should be plain when the Congressmen hear from the home builders. And the economic lesson might even remind some of them that when a shoe is badly made it's apt to pinch all over.

EXHIBIT 3

[From the Journal of Commerce, Mar. 22, 1960]

OUT OF THE BLUE

The Members of Congress who had thought that the recent easing in interest rates would give them a way out of their dilemma over the 4¼-percent ceiling on new Government obligations got a rude awakening last week.

The decline in money rates had looked like an answer out of the blue. There had been a growing recognition that something had to be done to eliminate the ceiling on rates the Treasury could pay on securities of over 5-year maturity. It was becoming obvious that the failure to lift the 4¼-percent ceiling was forcing the Treasury to rely far too much on short-term obligations. This led to a potentially dangerous situation of overliquidity in the economy.

There has also been a greater recognition that the forced reliance solely on short- and intermediate-term obligations could easily

[1] Source: Treasury Bulletin, February 1960.

lead to conditions under which the Federal Reserve would be obliged to ease credit despite its wishes to enable the commerical banks to take up securities not wanted by others.

Yet Congress has been trying to develop a nice political issue out of the ceiling by generating the impression that the refusal to lift it is really keeping interest rates low and helping out the small borrower.

The attempt to get the best of both worlds by allowing a small volume of new long-term bonds to be offered at above 4¼ percent, either by a small exemption or by advance refunding has not gotten far as yet. Hence, as interest rates fell moderately in the first months of 1960, it was suggested that the ceiling would cease to have any meaning if the problem were just forgotten long enough for long-term market rates to come back under the 4¼-percent level.

Under Secretary of the Treasury Julian Baird took the opportunity of a phone query on the question from Representative IKARD, Democrat, of Texas, to explain just why this hoped-for elimination of the problem by doing nothing won't work. His arguments were few but potent.

To be sure, he explained, rates on some outstanding Treasury obligations of over 5-year maturity are now under 4¼ percent, but this is not a true picture of what yields on new offerings would have to be.

In the first place, the scarcity of new long Treasury issues caused by the ceiling has artificially pushed up their yields by itself. In addition, the yields themselves do not present the true picture of market sentiment because of the tax advantages inherent in the deep discounts at which outstanding long bonds are now selling.

This is due to the capital gains which each bond will develop as it returns to par and the fact that Treasury obligations, no matter the market price, may be turned in at par to pay estate taxes.

Finally, there is the simple fact that new bonds must have a higher yield than outstanding issues simply to attract funds from outstanding investments and to compensate for the fact that supplies of securities will be increased.

This is why the Treasury has not tried to sell long bonds at 4¼ percent recently and why it is unlikely that any attempted offering at such a yield could be successful.

An additional point is that while interest rates have gone down somewhat in the last 2½ months, there is no reason to believe that they will continue to drop at such a rate or perhaps even to drop further at all.

Certainly if the economy takes a serious turn for the worse, such credit easing will develop, but no signs of this are presently available.

In addition, there is evidently a current shortage of mortgage money that is limiting new home starts to levels below those of 1959. Since interest rates are determined by the availability of credit, it is hard to see how enough excess investment money over demand could become available in the next few months to bring about much lower interest rates when the homebuilders are waiting in the wings for just such funds to finance the homes they feel they can sell.

This should deal the final blow to the hopes of those who feel that a short wait without doing anything about the ceiling will make the problem disappear.

What is needed, of course, is a complete removal of this 4¼-percent ceiling. It does not keep interest rates low, as some of its proponents assert, but rather it works in just the opposite direction; for this veto on sound debt management policies robs investors of confidence in the dollar and thus cuts the supplies of funds they make available for lending.

Certainly the compromise plans now under consideration would help. They would take the pressure off the Treasury by allowing at least some new obligations of over 5 years maturity to be marketed.

But a complete removal of the ceiling would not only accomplish this goal for the Treasury but would also give the capital markets a psychological lift that would help immeasurably in increasing savings and thus making long-term capital available at a lower price.

Mr. DOUGLAS. Mr. President, in view of the fact that the Senator from Connecticut made certain personal references to me, I wonder if I might be permitted to reply to him. I shall try not to exceed 3 minutes, but if I have to, I may ask for more time.

Mr. BUSH. Mr. President, I ask unanimous consent that the Senator from Illinois may proceed——

Mr. DOUGLAS. Mr. President, I ask unanimous consent that I may have time to reply to the Senator from Connecticut.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Illinois? The Chair hears none, and it is so ordered.

Mr. DOUGLAS. Mr. President, I was interested in the statement of the Senator from Connecticut that we were in a business recession. I have never made that statement myself. As a matter of fact, I do not think we are. I think we are in an arrested period in a previous upward movement, although we are still very far from full employment.

I can be certain, Mr. President, that if the Senator from Illinois had said we were in a business recession the Senator from Connecticut and others would have immediately leaped to their feet and once more accused me of being a prophet of gloom and doom. I want the RECORD to show doubly that this comment was a comment of the Senator from Connecticut and not of the Senator from Illinois.

Mr. President, I should like to point out that the Treasury has not followed a policy in the past of refunding an adequate amount of its short time securities when interest rates were low, so that, as a matter of fact, during the first 6½ years of the Eisenhower administration when long-term rates were below the 4¼-percent ceiling the average length of the public debt had shortened from around 5 years and 3 months to 4 years and 7 months as of June 1, last spring. However, when the interest rates were high the administration did wish to refund, and Under Secretary Baird, I believe it was, last October said their intention was to refund about $20 billion. At the same time the administration issued the 4-year and 10-month notes at par, with 5 percent interest. These were oversubscribed five times, which was a pretty clear indication that the interest rate was too high. I criticized the issue at the time, but of course that had no effect.

I think there is every reason to believe that if last year we had given the permission requested, the $20 billion, or a considerable fraction thereof, would have been refinanced at rates close to 5 percent.

I would call attention to the fact—which apparently my good friend from Connecticut does not question—that as of last Friday the average interest rate on the 26 issues of long-term Government securities was 3.96.

I will say that is an unweighted arithmetical average. I figured out this morning the average rate for yesterday, and it came to 3.953, a little less than the rate for last Friday, but not much less.

What we are facing is a fall in interest rates. This seems to distress the Senator from Connecticut very much. I do not want to have the fall in interest rates purchased at the price of a recession. I do not think we are yet in a recession. I hope we will never get in one. However, this fall in the interest rates seems to strike the Senator from Connecticut in a very sensitive nerve. He regards it as a sign of calamity. I do not regard it as a sign of calamity. I think it reduces the fixed charges which the American taxpapers, the investors and borrowers of America, have to pay for the use of capital and money. I do not regard it as a catastrophe.

On this question of the "fabulous 5s," I think it is now clearly evident that the interest rate was higher than it should have been. The Senator from Connecticut says that all the poor people had a chance to get in on it, but I should like to ask the Senator, how much was the minimum subscription which an individual had to put down for one of those bonds? Am I correct in my understanding that it was $1,000 for an individual?

Mr. BUSH. Mr. President, the Senator makes that assertion. I am not going to dispute it.

Mr. DOUGLAS. I think it is correct. The Senator was a very able Wall Street investment financier and he knows about this issue, of course, much more than I do. I merely desired to ask whether that was a common impression in Wall Street.

Mr. BUSH. I will say to the Senator, if he will give me a moment to do so, I do not believe that is true, although I have not been active in Wall Street for many years. I think anybody could buy a $100 bond if he wanted to.

Mr. DOUGLAS. I think the record will show the situation, and we should verify it before the CONGRESSIONAL RECORD goes to print. I believe the minimum was $1,000.

May I further ask the Senator from Connecticut, who has wide knowledge of financial matters, whether it was true that the smallest amount a bank or a brokerage house could in practice subscribe for was $25,000?

Mr. BUSH. I am not prepared to answer the Senator's question.

Mr. DOUGLAS. I think that is correct. I think we should check that. If I am in error, I will correct the matter in the RECORD before it goes to the public. If I am not in error, we will allow the RECORD to stand.

Let me say that if I am correct it would mean the small saver, by the standards of the American public and by the standards of the Senator from Illinois, was excluded, although of course to the Senator from Connecticut and to the Republican Party a person with $1,000 or $25,000 to invest would be "small potatoes."

Mr. BUSH. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. GRUENING in the chair). The time of the Senator from Illinois has expired.

Mr. DOUGLAS. I yield to the Senator.

Mr. BUSH. The Senator made several references to me.

The PRESIDING OFFICER. The time of the Senator from Illinois has expired.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senators be given additional time for their colloquy.

Mr. BUSH. Mr. President, I ask unanimous consent that the Senator from Illinois be granted an additional 5 minutes, if needed.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Connecticut? The Chair hears none, and it is so ordered.

Mr. DOUGLAS. I am glad to yield that time to the Senator from Connecticut.

Mr. BUSH. I simply want to say to the Senator that I have put into the RECORD this morning the statement that over 100,000 individuals bought those 5 percent bonds. I know, from information supplied by savings bankers all over the country, that it was the small people who came in and who made those bonds such a great success. The Senator's definition of "small" may be one thing and mine may be another, but I claim anyone who takes money out of a savings bank and puts it into Government securities comes under the general heading of a small investor, and not what the Senator called such people yesterday. I have forgotten the language the Senator used yesterday, about the rich speculators he claims to be the ones who cashed in on those 5 percent bonds. The record will not support the Senator's statement at all.

Mr. DOUGLAS. We have sent out a representative to telephone for the actual facts, and I ask permission, Mr. President, that at a later time——

Mr. BUSH. The Senator will not dispute the facts I have stated, will he; that these individuals who made withdrawals from savings banks throughout the country are small investors and will tell the Senator that? I ask the Senator if it is not a good thing for the people to invest in Government bonds.

Mr. DOUGLAS. It is a fine thing.

Mr. BUSH. I want to see them invest in long-term Government bonds.

Mr. DOUGLAS. It is a fine thing. However, it is not fine for the Treasury to pay a higher rate of interest than the competitive rate. That is precisely what the Treasury did. They issued a 5 percent interest bond. The issue was oversubscribed five times, which was a clean indication that the rate was higher than it needed to be.

There was every indication that the Treasury, if it received the authorization which it sought from the Congress, intended to refinance from $5 billion to $20 billion of debt at interest rates of 4¾ percent to 5 percent.

Apparently the Senator from Connecticut finds it very hard to admit the fall in the interest rate which has occurred.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point an article written by Miss Sylvia Porter which the Senator from Oklahoma [Mr. MONRONEY] has given to me, which discusses these so-called magic 5's.

I do not see the minimum amount stated in the article, but that can be made a matter of record in a few minutes.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

"MAGIC 5s" A MEMORY

(By Sylvia Porter)

In October of 1959, the Treasury sold $2 billion of new notes carrying a magic 5 percent coupon—the highest rate on a U.S. obligation in over a generation. The due date is 1964.

In February of this year, the Treasury sold another $2 billion of new notes. On these obligations, also to come due in 1964, the Treasury placed a coupon of 4⅞ percent.

If the Treasury were to issue similar notes today, it could sell them with an interest coupon of 4½ percent.

This illustrates the extent to which interest rates have declined just in the last few months. It also underlines the extent to which investors have been buying U.S. bonds, thus permitting the Treasury to borrow at progressively lower interest rates.

Behind the change are five basic forces. Specifically:

1. A first reason for the reversal lies in the degree to which interest rates had soared at the end of 1959.

So unusual was the 5 percent coupon on a Government note that announcement of the sale made worldwide headlines and investors who never before had even considered buying a Treasury security entered orders for them. Since October, individuals have become buyers of high-coupon U.S. marketable obligations on a scale unknown since the twenties.

2. A second reason has been the dwindling of inflation fears and thus, the willingness of investors to buy bonds in quantity again.

In most of the post-World War II period buyers of U.S. bonds have taken a licking because while they've received $1-plus-interest back for every $1 invested, the interest hasn't been enough to offset the rising cost of living and taxes.

Now the fear of runaway inflation has subsided.

3. A third factor has been the disenchantment of large numbers of investors with high-priced stocks.

From the beginning, the decline in stock prices has been furthered by shifting of funds from stocks to bonds—particularly by institutional investors. The shifts have been pushing up bond prices, pushing down interest rates, and new borrowers have benefited.

4. A fourth factor has been the downgrading of exuberant forecasts for business and for the need for credit this year.

The angle here is that in a more moderate economic advance there won't be such fierce demands for loans, and therefore not such intense pressures on borrowing costs. So far, at least, the demand for credit hasn't been sufficient to send interest rates to new peaks.

5. And a fifth factor has been the realization that as the Federal budget is balanced, the Treasury won't have to tap the market constantly with new loans. There'll hardly be a scarcity of Treasury issues—but there won't be an ever-growing supply, either.

It's improbable that the Treasury will have to pay 5 percent to borrow money again soon.

If you buy Government securities now, expect a satisfactory, comfortably "fat" but not sensational income.

[From the Washington Star, Mar. 20, 1960]

CORPORATE LIST AND TREASURY'S GAIN IN WEEK

(By Warren Bennett)

NEW YORK, March 19.—Corporate and Government bonds advanced this week on light volume.

Short-term interest rates eased in line with the Treasury's lower borrowing costs on its 13-week bills. The current issue drew a rate of 3.451 percent.

Mr. DOUGLAS subsequently said: Mr. President, the distinguished Senator from Connecticut [Mr. BUSH] refused to admit the accuracy of certain statements which I made a few minutes ago. I think it would be appropriate if I placed in the RECORD the facts about the Government bond market, as I have been able to gather them from experts in the Government.

Treasury bonds closing over the counter Mar. 19

Maturity	Rate	Bid	Asked	Net change	Yield
1960	[1] 2¼	99.7	99.9	+0.5	3.25
1965–60	[2] 2¾	98.12	98.20	+.8	3.01
1961	[1] 2¾	98.16	98.20	+.10	3.69
1961	[1] 2½	97.22	97.26	+.10	3.88
1962–59, June	[1] 2¼	96.10	96.14	+.12	3.93
1962–59, December	[1] 2¼	95.18	95.22	+.14	3.98
1963	[1] 2½	95.2	95.6	+.16	4.03
1964	[1] 3	96.8	96.12	+.6	4.01
1965	[1] 2⅝	93.16	93.20	+.12	4.07
1966	[1] 3	94.20	94.24	+.12	3.94
1967–62	[1] 2½	90	90.8	+.8	4.07
1968–63	[1] 2½	87.20	87.28	+.8	4.17
1969–64, June	[1] 2½	87	87.8	+.12	4.18
1969	[1] 4	99.20	99.28	+.24	4.01
1969–64, December	[1] 2½	86.16	86.24	+.12	4.17
1970–65	[1] 2½	86.8	86.16	+.16	4.17
1971–66	[1] 2½	85.24	86	+.12	4.10
1972–67, June	[1] 2½	85.16	85.24	+.8	3.98
1972–67, September	[1] 2½	85.4	85.12	+.8	3.96
1972–67, December	[1] 2½	85.16	85.24	+.8	3.93
1974	[1] 3⅞	97.12	97.20	+.12	4.09
1980	[1] 4	98.20	98.28	+.12	4.08
1983–78	[1] 3¼	87.24	88	+.8	4.05
1985	[1] 3¼	87.16	87.24	+.12	4.03
1990	[1] 3½	90.8	90.16	+.12	4.05
1995	[1] 3	86	86.8	+.24	3.70

[1] Prices quoted in dollars and thirty-seconds.
[2] Partially tax exempt.

First, the minimum amount of a marketable note which an institution or an individual can purchase is $1,000, as I said. The so-called fabulous 5s were notes of less than 5 years' duration. So I was correct on that point.

Second, as a practical matter, 17 New York brokers who deal in the bond market do not solicit bids as small as $1,000, because the cost would exceed the fees which they receive. Ordinarily, the New York brokers buy in lots of at least $100,000, although odd lots are bought from time to time.

The normal procedure would be for local banks to assemble customer bids and send them to their correspondent banks in New York, and a lot would be ordered. The local banks would wish normally to assemble a considerable volume of these bids, as I stated, before they purchased either from correspondent banks or from the 17 securities dealers, and the dealers would ordinarily buy only in large amounts in order that the fees would cover the costs of the purchase. Normally they would purchase in lots from $25,000 to $100,000. Or even more than those amounts.

There is another fact which I think needs to be noted: The Senator from Connecticut said there were 100,000 individual subscribers to the fabulous 5s. In the aggregate, that would seem to be a large number. But the total amount these subscribers purchased came to $778 million. I have done a little hasty division, and that would mean that the average subscription would be almost $8,000. That may seem to be a small investment to the Senator from Connecticut who, I suppose, is accustomed to deal with much larger figures than that. But, to me, it seems to indicate that only a relatively limited group of people in the United States were able to get hold of the so-called fabulous 5s, which, in my judgment, were issued at an appreciably higher interest rate than market conditions demanded; and that was evidenced by the fact that the volume of subscriptions was over five times the issue. When, at a given price, the demand is very, very much greater than the amount offered, that is an indication that if there were a competitive system, the price would increase.

This strengthens the case which has been presented by so many of us who have been demanding that the Treasury put up at auction its notes and bonds, as we have recommended, and as the Treasury now does in the case of its bills, instead of fixing an interest rate and then having the bonds sold at par, and having a rationing system to determine who, among the oversubscribers, will get the bonds, and on what terms. I have yet to hear a lucid defense of that practice.

Mr. President, I request that these remarks be printed following the colloquy I had earlier today with the Senator from Connecticut; and I also ask that the sheets be shown to the Senator from Connecticut, so he may have a chance to make a further reply if he so desires.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATUS OF THE TELEVISION INDUSTRY

Mr. McGEE. Mr. President, I should like to include in the RECORD today a number of recent articles on the question of the status of the television industry in this country. These are in addition to the items which I have been placing in the RECORD at more or less regular intervals.

First, I invite attention to an article entitled "Commissioner From Arts Field Needed," written by Roscoe Drummond, and published in the Washington Post of March 21, 1960. The author is an esteemed columnist. His recommendation is that in filling an existing vacancy on the Federal Communications Commission, someone from the field of arts be selected for that post. He says:

> It is evident that what the Commission now needs most of all is at least one member who has experience in the arts and/or education, and who has a manifest concern over the content of television and radio—not just in the mechanics of the industry and the legalities of licensing.

He pleads for at least one Commissioner with a special fitness for the position and an interest in seeing that the stations and the networks live up to their public service obligations.

Mr. Drummond quotes from a report by Mr. John Crosby, a commentator on one of the New York newspapers. I quote a part:

> The imbalance of the program structure is getting worse rather than better, and next fall there are going to be far fewer specials which gave some respite to the cowboys and the gangsters. It'll be a crying bloody shame if the great quiz and payola scandal is allowed simply to die down, leaving the general program schedule * * * where it is now.

In another report from Mr. John Crosby he suggests that the great TV reform wave announced by some people interested in the welfare of the TV industry and the public seems to have abated.

Mr. Crosby asks:

> What ever happened to the great reform wave that was supposed to sweep the beach clean?
>
> It's business as usual all over Madison Avenue. The clamor is dying down. The industry is firmly back in the hands of the advertising agencies and the breakfast food companies who are sturdily underestimating everyone's intelligence but their own. The schedule will be full of darling little husband and wife shows in which the children are adorable little monsters.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 21, 1960]

FCC VACANCY—COMMISSIONER FROM ARTS FIELD NEEDED

(By Roscoe Drummond)

Now that the Eisenhower administration has named such an able man as Frederick W. Ford to be chairman of the too long enfeebled Federal Communications Commission, the White House will certainly want to make a superior appointment to fill the place left vacant by the resignation of John C. Doerfer.

It is evident that what the Commission now needs most of all is at least one member who has experience in the arts and/or education and who has a manifest concern over the content of television and radio—not just in the mechanics of the industry and the legalities of licensing.

Let anyone tell you who wants to that this means Government censorship. But you don't have to believe him. Bear in mind that television-radio has to be a licensed industry because the airwaves are public property and are limited in number. The Government allows the stations to use these channels not just because they have the nicest buildings or announcers with good voices but because they agree to use the channels to perform substantial public service.

What the FCC needs is at least one Commissioner with special fitness and interest in seeing that the stations and the networks live up to their public-service commitments.

Put it this way: If for some reason there could be only four legitimate theaters and their use, therefore, had to be licensed in the public interest, you would not want the Commission made up entirely of real estate men. You would want at least one Commissioner who had theater experience.

It seems to me that the current vacancy in the FCC could usefully be filled by someone who has qualifications to consider what happens on television and radio after the licenses have been granted.

The appointee, I think, should be drawn from the arts or at least be sensitive to and interested in the arts and education. Such candidates as the following suggests themselves: Brooks Atkinson, the retiring drama critic of the New York Times; Clare Boothe Luce, author, playwright, and former Ambassador to Italy; William Benton, former Senator from Connecticut and advertising executive with a high sense of public responsibility; Mrs. Carroll Kearns, wife of the Pennsylvania Congressman and former president of the National Federation of Women, with experience in the theatrical arts; Frederick Coe, television's most distinguished producer; Hubbell Robinson, originator of "Playhouse 90" and "The Lively Arts" programs.

I am not urging the appointment to any of these people. I cite them to show the kind of Commissioner who would add the competence and balance the FCC so acutely needs.

How acutely needed is suggested by this report from John Crosby, the New York Herald Tribune's syndicated television critic:

"The imbalance of the program structure is getting worse rather than better and next fall there are going to be far fewer specials which gave some respite to the cowboys and the gangsters. It'll be a crying bloody shame if the great quiz and payola scandal is allowed simply to die down, leaving the general program schedule * * * where it is now."

If the FCC or the Harris committee doubt this report, they ought to lock themselves in a room and watch television 12 hours a day for a week. Then they would know what the phrase "long suffering public" means.

[From the Washington Post, Mar. 16, 1960]

GREAT TV REFORM WAVE SEEMS TO HAVE ABATED

(By John Crosby)

Already CBS is almost sold out for next year. Mostly, the program schedule is what might be described as quality junk. Well, perhaps "junk" is too strong a word. There will be an almost uninterrupted flow of bread and butter programs—situation comedy, shoot 'em-ups, quizzes. There will be almost no serious programing worth mentioning. What ever happened to the great

reform wave that was supposed to sweep the beach clean?

It's business as usual all over Madison Avenue. The clamor is dying down. The industry is firmly back in the hands of the advertising agencies and the breakfast food companies who are sturdily underestimating everyone's intelligence but their own. The schedule will be full of darling little husband and wife shows in which the children are adorable little monsters.

In an excellent article in the current McCall's magazine, Clare Boothe Luce, a murderously accurate phrasemaker, calls television "Everyman's Scheherazade" and titles her article part one—"A Thousand Nights of Terror and Violence." There'll be another one this month.

"Today there are 27 westerns and 20 whodunits on the weekly programs of the major networks," Mrs. Luce writes. "For a thousand and more nights, from sea to shining sea, their chilling hordes have passed before the eyes of 42.5 million American families. Among their evil numbers are safeblowers, brainblowers, convicts, extortioners, counterfeiters, blackmailers, thugs, gangsters, stool pigeons, hoodlums, savages, cattle rustlers, trigger-happy cowpokes, lynchers, jailbreakers, adventurers, drunks, drug addicts, pushers, pads, panderers, pimps, housebreakers, homebreakers, arsonists, sadists, psychopaths, prostitutes, rapists, maniacs, and murderers—all the lice and scum, damned and doomed dregs of humanity, giving an advanced course for young and old in all the techniques of crime and the modes of violence."

The Harris subcommittee recommends that fixing quiz programs be made a crime which is like outlawing cattle rustling. It's a good thought, but the time for such action is past. If the Harris subcommittee wants to know what is really wrong with television, it ought to stop interviewing witnesses and look at that monstrous box for a week.

CBS promised an hour-long program of public affairs—either culture or news documentary. This has been watered down to 26 weeks. NBC promised "World Wide 60," a program of very high cultural aspiration, and this program is on the air, though its achievements are not up to its aims. ABC went its usual cynical way—making money.

TAXES AND ECONOMIC GROWTH

Mr. McGEE. Mr. President, I should like to add to the RECORD a letter to the Washington Post, published in the March 21, 1960, issue of that paper, from Leon H. Keyserling, who once served as chairman of President Truman's Council of Economic Advisers. I include this article because it is in reply to and in addition to a column which I inserted in the RECORD earlier this month, by Mr. Walter Lippmann. The subject of both Mr. Lippmann's column and Mr. Keyserling's letter is that of the economic growth of our country, and the capacity, if we properly use our economic resources, to meet our tax needs, our program requirements, and our national requisites under the present economic structure.

For the benefit of all who care to read, I ask unanimous consent that this letter be printed in the RECORD at this point as a part of my remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

TAXES AND ECONOMIC GROWTH

Walter Lippmann's column of March 8 shows his unerring ability to arrive at a sound position on the most complex problems, when he has had time to sift competing views.

He points out that an annual overall economic growth rate of about 5 percent would enable us (a) to meet our domestic and international public needs in full, and (b) to maintain an average annual rise in per capita private consumption much higher than during recent years.

This should help to dispel the dangerous confusion, spawned even by some of our best-known economists, to the effect that adequate public programs depend upon measures to repress the affluence of private consumption.

In addition to its economic indefensibility, the idea that we should achieve more adequate public programs by less affluent private consumption is highly antisocial despite its moral fervor. If some of those who bemoan private affluence and public poverty visited the public schoolrooms in our 10 largest cities, and then visited the homes of the children in these schools, and of their grandparents on pensions, they would find a mass of private poverty quite as shocking, far more degrading, and just as great a social and economic liability to the Nation as the overcrowded classrooms and underpaid teachers. If they visited our rural areas, they would learn still more about private poverty.

To be sure, there is some glaring private luxury (not just affluence) among some of those whose children do not go to public schools. This calls for an improved distribution of private goods, through better private and public economic policies, including tax revision and closing of loopholes. But perish the proposal made very recently by a leading economist in the Saturday Evening Post, to the effect that States and localities should support expanded educational efforts through more sales taxes or payroll taxes of a regressive character.

In an underdeveloped economy, where 95 percent of the people are poor, consumption must be harshly repressed to obtain a rapid enough rate of capital formation. But the more affluent a society becomes, the less reason there is for such taxes. Viewing the technological outlook in the United States, requiring vast expansion of both private and public consumption, such taxes would be utterly perverse.

In fact, the projections used by Mr. Lippmann really show that current tax rates plus appropriate revisions would finance all the public programs he favors, if the overall rate of economic growth were held high enough to maintain reasonably full use of our production resources. In that event, lifting public spending from 20 to 22 percent of our total national product would permit balanced budgets without higher tax rates because, under our progressive tax systems, a high rate of economic growth automatically yields much higher tax receipts per dollar of private income taxed.

And if, even with an adequate level of public outlays, the overall rate of economic growth were still too low, because of inadequate private consumption and investment, higher tax rates would just make the whole situation worse. The budget should be balanced at reasonably full use of our resources; the attempt to balance it through any combination of spending and tax policies short of that full use has been proved self-defeating on all scores.

The tendency of some economists to try to solve one of our great problems by neglecting the others, instead of seeking a balanced and integrated approach to these problems as a whole, is doubly costly to us in view of the Soviet capacity to achieve this integration.

LEON H. KEYSERLING.

THE TRAGEDY AT SHARPEVILLE

Mr. JAVITS. Mr. President, I invite attention to a tragedy which has occurred, which should appall all Members of the Senate. I think the whole world must be sickened at heart and struck with horror at what took place yesterday at Sharpeville in the Union of South Africa, where many people—and they are human beings, whatever may be the color of their skins—were shot down, not only by police action, but by military action, because there was a very large scale riot.

Whatever may be the problems involved, certainly, as the New York Times says today, this is one of the evil fruits of the policy of apartheid. The Times asks this question—and I echo it; I think it echoes itself to the whole world:

But how often can this be done? Does it really settle anything? Do the South Africans think that the rest of the world will ignore such a massacre?

I do not believe the rest of the world will. Perhaps it requires a horror like the slaughter at Sharpeville to bring home to the white South Africans themselves the evil which the policy of apartheid represents.

We are debating a civil rights bill. Some of us occasionally become a little warm over the subject. We often should, and I think very properly. It has been mentioned much too infrequently, but there is a great world issue involved. The colored races of the world will not accept a second-place status. They are stirred, and if we do not give them an outlet, they may very well embrace the Communist doctrines.

Two-thirds of the population of the world consists of persons whose skins are black or yellow. We must realize what is at stake in asserting the morality and validity of our own Constitution in the United States.

I am not becoming emotional over the subject, but that does not mean that we should not be decisive about it, or that we should not understand, as statesmen and legislators, the important world issue which hangs in the balance as we discuss the civil rights issue, so horribly accentuated by what took place at Sharpeville.

It is significant that the New York Times has placed immediately above the editorial entitled "The Tragedy at Sharpeville," an editorial entitled "How Many Civil Rights?"

Let us all think about the problem, regardless of what part of the country we come from, and regardless of how deep our views may be on the issue of the difference between races.

I say to my colleagues from the South that we are Americans first, but all of us want peace and justice in the world. I ask unanimous consent that both editorials may be printed in the RECORD at this point as a part of my remarks.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the New York Times, Mar. 22, 1960]

HOW MANY CIVIL RIGHTS?

The House of Representatives is expected to proceed today with its consideration of a civil rights bill. The expression "civil rights" has a fairly precise meaning this year. It signifies the right of the Negro in several Southern States to be treated as the Constitution directs.

The Senate has been dealing with this matter on and off since February 15. The

House got around to it later and, despite some sluggishness, will supposedly produce a kind of bill in a week or so. The House bill will not be a fanatically liberal measure. Last Friday a southern effort to restrict Negro voting guarantees to Federal elections was defeated by the appallingly close majority of 137 to 134. Yesterday a similar move was more emphatically rejected. It stands to reason that a voter who takes part only in Federal elections will not be an object of great political solicitude on the part of local officials.

It scarcely matters what it is that keeps men from voting. If, as has been reported in this newspaper, Negroes in some parts of the South are so intimidated that they dare not even try to register, the effect is the same as though the law said they could not register. Nevertheless, it would be a forward step if there were federally directed machinery which could assist qualified Negroes to register and vote if local machinery could not or would not do this.

The civil rights bill has been sufficiently diluted. Some of the hopes held for it are already destroyed. A minority of a minority has already frustrated to some extent the will of Congress and we may safely assume the desires of most of our population. The blame is not purely southern nor purely Democratic.

The tricks that have been played with this issue have been almost too clever. If the bill that is finally passed and sent to the White House, as some bill surely will be, is altogether too feeble and misleading, it will be important to determine the blame. There will be time to do this before November.

THE TRAGEDY AT SHARPEVILLE

The evil policy of apartheid—the separation of blacks from whites in South Africa—cannot help bearing evil fruits. There is a sense of tragedy hanging over that country. Yesterday saw the horror of dozens of Africans being mowed down and killed by rifles and machine guns as the result of a protest against one phase of apartheid—the requirement for nonwhites to possess and show a pass.

South Africans are wrong to think that nobody in the world understands the complexity and delicacy of their color problem. Along with the injustice of apartheid, there has gone a genuine effort to better the lot of the African, and this is realized. No one thinks that South Africans are wicked men in the sense that they would deliberately plan, or feel anything but distress over, an incident that brings such appalling results.

However, the fact remains that a policy which degrades the great majority of the people of a nation is certain to lead to tragedy. True enough, the South African authorities can suppress a mob such as the one that gathered in Sharpeville, 30 miles south of Johannesburg. The African men and women were armed—those who were armed—with stones. The police used tear gas and then rifles, machine guns, tanks, and jet fighters. It was easy to kill nearly 50 men and women and to wound scores more.

But how often can this be done? Does it really settle anything? Do the South Africans think that the rest of the world will ignore such a massacre? Perhaps it takes a horror like that slaughter at Sharpeville to bring home to the white South Africans themselves the evil that the policy of apartheid represents.

"WHICH PAGE OF THE WASHINGTON STAR DO YOU READ?"

Mr. MONRONEY. Mr. President, I was astounded to read two interesting items in the Evening Star of Saturday, March 19, dealing with the same subject. The editorial writer heads his editorial "An Industry Speaks Up." In the editorial he writes:

The National Association of Home Builders, representing a membership of approximately 43,000, has announced its vigorous support of legislation approved late last month by the House Ways and Means Committee.

He goes on to say:

The association, closing ranks with others that are dominant and representative in the related building and mortgage fields, describes the legislation as "a sincere, well considered bipartisan effort" and urges congressional enactment "at the earliest possible date."

Then I turned to the real estate page of the same paper on the same day and found an article written by the real-estate editor of the Washington Star, Mr. Robert J. Lewis. He headed his article "Tight Money Versus Homes." The subhead reads "Deflationary Impact Hits Housing."

The three points he makes are that the administration's tight money policy is, first, having a severely adverse effect on the rate of home production; second, imposing an implicit downward pressure on the value of existing homes; third, making it impossible for many thousands of families to buy homes which they need.

Further down in his column he says:

The report—

This refers to a report made by the House Banking Committee—

The report has some harsh words to say about the tight money policy, as it has affected home production, interest rates, and financing methods.

It charges that the shortage of mortgage credit "has caused a costly upward spiral of interest rates, unconscionable discounts on FHA and VA mortgages, increased use of unsound and costly financing devices in the conventional loan sector, and a serious decline in home building.

Mr. President, I ask unanimous consent to have both of these items printed in the RECORD at this point.

There being no objection, the editorial and article were ordered to be printed in the RECORD, as follows:

[From the Washington Star, Mar. 19, 1960]

AN INDUSTRY SPEAKS UP

The Treasury Department has received a potentially powerful assist from the home-building industry in its fight to relax the 4.25 percent statutory interest rate ceiling on long-term Government financing. The National Association of Home Builders, representing a membership of approximately 43,000, has announced its vigorous support of legislation approved late last month by the House Ways and Means Committee. The association, closing ranks with others that are dominant and representative in the related building and mortgage fields, describes the legislation as "a sincere, well-considered bipartisan effort" and urges congressional enactment at the earliest possible date.

In brief, the bill as approved by the committee would help in two respects to free the Treasury from being confined to costly and inflationary short-term (less than 5-year) financing of the gigantic public debt. It would, for example, permit the yearly marketing of long-term securities, without any arbitrary interest ceiling, up to a total face value of 2 percent of the debt. Currently, this would make salable to long-term investors about $5.8 billion in Treasury bonds. It would also allow the Treasury to exchange on a face-value basis new bonds of longer maturities and higher interest rates, up to 4.25 percent, for outstanding securities bearing lower interest rates and currently selling below their face value.

In taking its present position, the association presents a sound and persuasive case both for the overall national interest and for the special interest of its own industry. It accepts, for example, the argument and the evidence that even "limited adjustments" in the 42-year-old ceiling would give the Treasury more flexibility in managing the public debt, would on the whole permit greater economy in interest charges to the Government, would lessen the competition of Government financing with certain areas of private credit, and would cut down the inflationary effects of public borrowing. For the related building and mortgage industries, it acknowledges that locking the Treasury into short-term financing actually forces interest rates higher (to 5 percent or above) with the net effect of "draining money" out of savings banks and other institutions which normally supply mortgage credit. Defeat of the pending legislation, the association concludes, "could well mean tighter mortgage money and higher money rates."

The association's reasoning is logical and accurate. It recognizes, too, that this is an issue that has been ambushed in partisan politics. The health and welfare of the homebuilding industry have broad impact on the national economy. It should be helpful that its trade association, its principal mouthpiece, is supporting the Treasury on a problem that should be resolved entirely outside of narrow partisan considerations.

[From the Washington Star, Mar. 19, 1960]

TIGHT MONEY VERSUS HOMES—DEFLATIONARY IMPACT HITS HOUSING

(By Robert J. Lewis)

Whatever merits the administration's tight-money policy may have, there is no denial that this policy is—

1. Having a severely adverse effect on the rate of home production.

2. Imposing an implicit downward pressure on the value of existing homes.

3. Making it impossible for many thousands of families to buy homes that they need.

FAR BELOW YEAR AGO

Ever since October, there has been a month-to-month decline below year-ago levels in the seasonally adjusted rate of homes put under construction for private ownership.

The 5-month record of decline from the corresponding months of the previous year appears to be serious. Each month's drop in the number of homes started is as follows:

October	123,000
November	217,000
December	122,000
January	154,000
February	288,000

If the rate of decline continues—and there is little to indicate, at the moment, that a reversal of the tight-money policy is contemplated—yearly production may soon dip to recession levels, observers believe.

PRESSURE EFFECTIVE

In any deflationary period, the value of things declines in relation to the dollar, and homes are no exception. While it would be difficult to measure the exact effect, so far, upon existing homes, there is no question that the downward pressure does exist and that it is effective, even though not upon all homes equally.

As for hampering sales of new and existing homes, there is ample evidence everywhere that the administration's tight-money policy

has completely removed from the market a sizable group of prospective buyers.

Application of restrictive credit policies by the Federal Reserve Board has pushed mortgage interest rates to their highest level since the 1920's. In this economic climate, lenders have become selective. The result is that many families needing homes have discovered that the income they have is now insufficient to qualify them for homes for which they easily would have been eligible before the latest episode transpired in the administration's long-term, tight-money program.

REPORT FAVORABLE

With this background of evidence of a rapidly declining home-production rate, of downward pressure on the value of existing homes, and of neutralization of a sizable part of the potential demand, the House Banking Committee's favorable report this week of the emergency homeownership bill came as a welcome event for homebuilders.

The bill would provide an additional $1 billion in mortgage purchase authorization for the Federal National Mortgage Association, and make other changes designed to support housing production.

Among changes are provisions that would—

1. Allow FHA to insure home loans made by individuals, as well as by institutional lenders.

2. Permit FHA to reduce its mortgage insurance premium from one-half of 1 percent to one-quarter of 1 percent.

3. Authorize FNMA to aid in stabilization of the mortgage market and thus exclude as a requirement that the agency lower the prices of the mortgages it sells to keep them within the range of market prices.

4. Require FNMA to buy any FHA or VA mortgage offered to it, with certain exceptions, and to desist from refusing to buy on the basis that certain mortgages would not be marketable.

NO MORE EXCHANGES

5. Require FNMA to sell mortgages only for cash and at prices not less than FNMA originally paid. This would, as one of its effects, prevent repetition of the agency's action in exchanging mortgages for outstanding Government bonds.

6. Require anyone selling a mortgage to FNMA to buy only 1 percent of the agency's stock, instead of 2 percent as at present.

7. Authorize FNMA to purchase $50 million in mortgages on new low-cost homes in outlying areas as a means of encouraging such construction.

8. Make changes designed to encourage construction of off-base defense housing, allow acquisition of housing at permanent military installations, and supply needed housing for certain employees of the National Aeronautics and Space Administration.

The report has some harsh words to say about the tight-money policy, as it has affected home production, interest rates, and financing methods.

POLICY HELD BALKED

It charges that the shortage of mortgage credit "has caused a costly upward spiral of interest rates, unconscionable discounts on FHA and VA mortgages, increased use of unsound and costly financing devices in the conventional loan sector, and a serious decline in homebuilding."

The report continues:

"This has frustrated our national policy of improving housing conditions and encouraging homeownership on a sound basis. Moreover, the drop in residential construction which has taken place over the past year has resulted in a loss of more than half a million jobs.

"The experience of the 1957–58 recession proved that a downtrend in home building activity, if allowed to continue unchecked, can undermine the entire economy."

The report, which was submitted by Chairman SPENCE, was based on hearings held by the Housing Subcommittee headed by Chairman RAINS, who introduced the bill.

The report made clear the committee was "convinced that the dropoff in new home construction, in the face of strong demand for housing, is the direct result of the restrictive monetary policies pursued by the monetary and fiscal authorities."

"The hearings held on this bill established conclusively that this tight-money policy has a particularly severe impact on residential construction," it said.

Referring to the present status of mortgage loan availability, the committee termed it "an artificially created credit shortage." The decline in homes put under construction, the report said, "could well" fall to a "dangerously low" level soon.

PROPOSED POSTAL LETTER RATE INCREASE—BLOW TO TAXPAYERS

Mr. YOUNG of Ohio. Mr. President, a careful examination of President Eisenhower's request for increased letter postal rates once again demonstrates the topsy-turvy economic philosophy of this administration.

The President proposes that first-class rates be raised from 4 to 5 cents for letters and from 3 to 4 cents for post cards, while airmail rates be increased from 7 to 8 cents for letters and from 5 to 6 cents for post cards.

The latest available figures furnished by the Post Office Department to the chairman of the Joint Economic Committee, the distinguished senior Senator from Illinois, show an annual surplus in fiscal year 1959 of more than $156 million for first-class mail and airmail. In spite of this fact, the administration's proposal would produce an additional $427 million a year in these classes which are already more than paying their way.

The entire net deficit of $569 million of the Post Office Department for fiscal 1959 was caused by the $726 million deficit in the remaining classes of mail, which for the most part are comprised of newspapers, magazines, and business materials.

The current administration request would result in only $127 million in increased revenue in these latter classes. There would still remain a deficit of approximately half a billion dollars in second, third, fourth, and other classes of mail.

For example, in fiscal 1959 the largest class deficit of $303 million was in second-class rates, which are for newspapers and magazines. The proposed rate increase would yield only $46 million in additional revenue from this class, still leaving a deficit of around a quarter of a billion dollars.

Mr. President, these figures show that the huge deficit in the Post Office Department is caused primarily by a virtual Government subsidy amounting to almost three-quarters of a billion dollars for newspapers, magazines, and business groups.

What the President's request boils down to is that Mr. and Mrs. Average American Taxpayer, who are presently paying their own way, be required to pay more for postal services in order that this subsidy for big business can be continued.

Mr. President, the postal service was never designed to be a moneymaking business. It is a vital service given to the taxpayers by their Government in return for their tax dollars along with highways, schools, defense, and a multitude of other services. No American resents a small amount for this service in addition to their tax dollars. They do not object to a reasonable annual deficit which is in reality a return on their tax investment. This is a proper service of Government.

However, taxpayers will resent, and those who are aware of it do now resent, paying more for postal services in order to make up the deficit caused by select groups in the economy.

If the annual loss in operating the postal service has become unreasonable, the burden of lowering it should be put on the shoulders of those who caused it. It should not be foisted onto the already tax-laden back of the American wage earner.

It is an odd fact that while the administration advocates increased postal rates from the average American to pay for the deficit caused by a few, it continually opposes any really adequate legislation designed to benefit all Americans—adequate housing, adequate school aid, adequate water pollution control, aid to depressed areas, new public works projects, and much other vitally needed legislation, which the administration has opposed right along.

At the same time administration officials urging higher postal rates for Mr. and Mrs. John Q. Public are imploring the Congress to raise the interest-rate ceiling on long-term Government bonds. While I do not question the motives of the administration in doing so, very few Americans other than bankers and wealthy investors will benefit from this latter proposal. Apart from making some wealthy Americans wealthier, it will saddle future generations of all Americans with a larger interest obligation on the national debt.

The Post Office Department has spent tremendous sums of money on electronic devices in many post offices throughout the country. Whether this is, to some degree, an extravagant and unwarranted expenditure, I am not able to say. However, information given me indicates that much of this electronic equipment is used only at peak mail periods—preceeding Christmas, for example—and that the equipment gathers dust most of the time.

Possibly, the Postmaster General should be questioned closely to determine whether or not he is, in reality, practicing rigid economy. This should certainly be done before we increase first-class mail rates.

Before the Congress should even consider laying the heavy burden of increased letter postage upon the backs of the citizens of this Nation, we must—through our investigative process—demand that the Postmaster General convince us the Post Office Department is practicing rigid economy and has cut unnecessary spending to the bone.

Mr. President, the proposed postal rate increase on first-class mail is en-

tirely unwarranted at this time. If the deficit is to be reduced, the task of doing so must be placed on that segment of the economy which created it.

NEW YORK NEWSPAPER EDITORIALS OPPOSE HAMSTRINGING OF NEW YORK PORT AUTHORITY

Mr. KEATING. Mr. President, a recently introduced House resolution which would interpose the control and supervision of Congress between the two States of New York and New Jersey and the port authority has evoked considerable interest among New Yorkers. Although a few have responded with declared positions, pro and con, the great majority have written in to inquire into the need for and reason behind this resolution.

So far as I am concerned, this proposal is simply a revival of attacks on the port of New York Authority first made almost 10 years ago. During a previous investigation of this authority along the same line in 1952, Governor Dewey, of New York, and Governor Driscoll, of New Jersey, were joined by every then-living former Governor of the two States in opposition to the proposal that the Congress of the United States, rather than the two States themselves, should control the port authority's activities in developing their common port facilities.

The metropolitan press, in almost univocal accord, dismissed the 1952 committee hearings as an irresponsible waste of time. As a creature of the two States, subject to the veto power of the New York and New Jersey Governors and dependent upon the two legislatures for all its powers, the port authority is, of course, always liable to, and I am sure ready for, responsible investigation. I feel strongly, however, that a repetition of the 1952 performance for no apparent reason would be a frightful disservice to the people of New York and New Jersey.

The New York Times, the New York Herald Tribune, and the New York Daily News all carry editorials today condemning the House resolution as an attack upon the authority. I know that these editorials will be of interest to many Senators, and I ask unanimous consent that they be printed at this point in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD as follows:

[From the New York Times, Mar. 22, 1960]

PORT AUTHORITY HOME RULE

In 1921 the States of New York and New Jersey established by compact the Port of New York Authority, and this compact was consented to by Congress. It is not necessary here to recite the great benefits that have followed. Now the House Judiciary Committee is about to consider a resolution by Representative EMANUEL CELLER, of New York, that would replace the original broad grant of autonomy given to the authority, and especially to the two States, with a grant to Congress of dictation and veto. This resolution says: "All legislation hereafter enacted by the compacting States amending or supplementing this compact shall not become effective until approved by Congress."

What are the politicians out to punish the port authority for? Businesslike efficiency? Meeting the needs, as requested, of cities and the two States? Meeting, and preparing to meet, the challenge of their age? Can Representative CELLER, or any other Congressman, point to a single instance of major activity by the port authority in New York or New Jersey that should now be reversed or should not have been undertaken at the time? Should New York International Airport not have been developed, La Guardia and Newark fields not have been improved? Should the Lincoln Tunnel never have been built? Should other crossings of the Hudson have been vetoed?

Does Congress want to have the veto power over modernization of piers in Brooklyn, or Newark, or Hoboken, over every new undertaking, every bridge, every tunnel, every bus terminal to be built? Or does it feel that these matters of local interest, not infringing on the larger authority of Congress or the Federal Government, may safely remain within the jurisdiction of localities and the States?

Before the port authority can proceed with any major new project it must have the approval of the Legislatures of New York and New Jersey. The minutes of its board meetings must have the periodic approval of the Governors of the two States. If Congress wants to undo the good it gave its blessing to, and make the port authority and the States of New York and New Jersey run down to Washington and plead for permission and a new law every time a nail needs to be driven, the Celler resolution is the way to start moving in that direction. The bill should be thrown out.

[From the New York Herald Tribune, Mar. 22, 1960]

NOT THE BUSINESS OF CONGRESS

Congressman EMANUEL CELLER, of Brooklyn, would like to put the Port of New York Authority in short pants.

That's the plain purpose of his House Joint Resolution 615, which would require congressional approval every time that New York and New Jersey desired the bi-State authority to build a new bridge, tunnel, bus terminal or any other necessary facility for the development of port commerce and transportation under the 1921 compact.

Now Mr. CELLER is frequently given to charging that the port authority is a superstate, too big and beyond effective control. Well, certainly the agency has done a superb job in what it was organized to do. It is big because the necessities are big. But, as Mr. CELLER very well knows, the port authority is a creation of the two States and its activities are directly subject to the legislatures and Governors.

Congress, of course, assented to this regional compact in the beginning, and conceivably it could examine the authority's workings if any reasonable need developed. But this is first of all the States' business, and besides what is there to investigate?

When Mr. CELLER seeks congressional review of every port authority proposal, and for good measure threatens an investigation of the whole agency, he is simply wandering off into foolishness.

There is no need for Congress to interfere. New York and New Jersey have managed extremely well for themselves, and will continue to do so. The control of the port authority is properly a home-front affair.

[From the New York Daily News, Mar. 23, 1960]

HOW TO WASTE TIME

Ever since 1952, and for reasons best known to himself, Representative EMANUEL CELLER, Democrat, of Brooklyn, has been nursing an elephant-size peeve at the Port of New York Authority. This is the efficient, honest, and well-nigh indispensable outfit which runs New York's and New Jersey's great complex of piers, tunnels, bridges, airports, etc.

Back in 1952, CELLER and a few congressional cronies shrieked that PNYA was a wicked trust, which would be greatly improved, however, if Congress were given some kind of veto power over the New York-New Jersey trade treaty, signed in 1921.

Then Governor, Thomas E. Dewey, slapped that idea down as plain "mischievous."

Today, in the House Judiciary Committee which he heads, Manny proposes to try again. He has concocted a Joint Resolution 615, and wants to sell it to Congress. It, again, would give the lawmakers of our 50 States the right to meddle in highly important matters which concern only two States.

The inevitable result of such heckling, of course, would be that competing, one-State ports like those of Baltimore, New Orleans, Boston, Philadelphia, Houston, and San Francisco would remain free to make efficient decisions in their own interest. Only our New York-New Jersey facilities would be hogtied by inability to move without national lawmakers' OK.

What team is our alleged Representative CELLER playing on, anyway? And why, with hundreds of truly important issues to consider, should our harried lawmakers be forced to waste time on what seems to be a private, dreary feud?

Mr. JAVITS. Mr. President, will my colleague yield?

Mr. KEATING. I am very happy to yield.

Mr. JAVITS. I should like to join with my colleague in this matter. We had occasion to discuss it at a breakfast given by the port authority the other day. I think we shall undertake to marshal the achievements of the port authority as a very, very important aspect of this particular proceeding.

If I were to make a prediction, I say to my colleague, I think that at the end of the proceeding, if it is really gone through with, the port authority will come out stronger than when it went in.

Mr. KEATING. I am certain that that is so. I appreciate the remarks of my colleague from New York.

ABOLISHMENT OF MANDATORY DEATH PENALTY IN THE DISTRICT OF COLUMBIA

Mr. KEATING. Mr. President, I am delighted at reports that the Subcommittee on the Judiciary of the Committee on the District of Columbia is planning early action on a bill—S. 2083—which I introduced to abolish mandatory capital punishment in the District of Columbia. This is a reform in the local law which is long overdue and which should have the support of anyone interested in advancing our concepts of justice.

S. 2083 by its terms preserves the death penalty for first degree murder cases unless the jury recommends life imprisonment and the court concurs in the recommendation. This procedure for allowing the exercise of discretion is patterned after the New York homicide law. The Judicial Conference has recommended a somewhat different provision under which they prescribe the punishment for murder in the first degree as life imprisonment unless the jury, by a separate vote, recommended the death penalty and the court concurred.

I want to make it clear that I fully accept the alternative recommendations of the Judicial Conference and would have no objection whatever to an amendment to S. 2083 which would bring it into conformity with these recommendations.

The important thing is to do away with the barbaric practice in the District of Columbia which prevents any room for the exercise of discretion in predefined cases. The particular formula by which this reform is accomplished is of secondary consideration.

This point is made clear in a letter I have received from Aubrey Gasque, Esq., Assistant Director of the Administrative Office of the U.S. Courts. He points out in his letter to me:

The principal objective of this proposed legislation (the Judicial Conference bill), it must be emphasized, is identical with S. 2083 which you introduced, and aims to eliminate the mandatory feature of the death penalty now prescribed in all first degree murder cases in the District of Columbia, in favor of a discretion to impose either a death penalty or life imprisonment in such cases.

Mr. Gasque's letter further points out that the proposal approved by the Judicial Conference was believed to be more satisfactory in that "it would require a jury recommendation of the death penalty when that penalty is imposed in future cases."

I commend the chairman of the District of Columbia subcommittee, the distinguished Senator from Indiana [Mr. HARTKE] for the cooperation and leadership which he has demonstrated in dealing with this problem.

Mr. President, I ask unanimous consent that Mr. Gasque's letter, a report of the Circuit Judicial Conference Committee on the Abolition of Mandatory Capital Punishment in the District of Columbia, and a report of the Committee on Administration of Criminal Law in the U.S. Judicial Conference, which includes their draft bill, be printed at this point in the RECORD.

There being no objection, the letter and reports were ordered to be printed in the RECORD, as follows:

ADMINISTRATIVE OFFICE OF THE
U.S. COURTS,
Washington, D.C., March 21, 1960.

Hon. KENNETH B. KEATING,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KEATING: This is in response to your request for a copy of the draft bill recently approved by the Judicial Conference.

We are delivering for your use copies of that draft bill prepared by a committee of the local circuit judicial conference.

The principal objective of this proposed legislation, it must be emphasized, is identical with S. 2038, which you introduced, and aims to eliminate the mandatory feature of the death penalty now prescribed in all first degree murder cases in the District of Columbia, in favor of a discretion to impose either the death penalty or life imprisonment in such cases.

The proposal approved by the Judicial Conference is, for the most part, a more recent draft and embodies certain changes which, it was believed, would be more satisfactory in that it would require a jury recommendation of the death penalty when that penalty is imposed in future cases.

Your efforts in instituting a movement to eliminate the mandatory feature of the present District of Columbia death penalty will, it is widely believed, have a salutary effect on the future administration of justice in the District of Columbia. Your past and continuing leadership in this and other areas of judicial reform is greatly appreciated by all who must administer justice here and elsewhere.

Sincerely yours,

AUBREY GASQUE,
Assistant Director.

REPORT OF THE CIRCUIT JUDICIAL CONFERENCE COMMITTEE ON THE ABOLITION OF MANDATORY CAPITAL PUNISHMENT IN THE DISTRICT OF COLUMBIA

Since the recess of the Judicial Conference for the District of Columbia Circuit on May 22, 1959, the Committee on the Abolition of Mandatory Capital Punishment in the District of Columbia has met and given further study to questions recommended for further consideration, as follows:

(a) In whom to lodge the discretion to impose the penalty of death or of life imprisonment.

(b) The procedure for exercising such discretion.

By a vote of 20 to 3, the committee has concluded to recommend to the Conference at its reconvened session on November 24, 1959, the adoption of the attached resolution. The attention of the Conference is invited to the "Notes to Accompany Resolution," also attached.

Dated: November 16, 1959.

Harry T. Alexander, H. Clifford Allder, George Blow, David G. Bress, William B. Bryant, Edward L. Carey, E. Riley Casey, Harold D. Cohen, Paul R. Dean, F. Joseph Donohue, Abe Fortas, Oliver Gasch, June L. Green, George E. C. Hayes, Francis W. Hill, DeWitt S. Hyde, John L. Laskey, William P. MacCracken, Bernard Margolius, Louis Mayo, James P. McGranery, Hubert B. Pair, E. Barrett Prettyman, Jr., Una Rita Quenstedt, C. Frank Reifsnyder, Roger Robb, Leo A. Rover, Doris G. Wilkins, Charles B. Murray, Chairman.

RESOLUTION TO BE SUBMITTED TO THE JUDICIAL CONFERENCE OF THE DISTRICT OF COLUMBIA CIRCUIT, NOVEMBER 24, 1959

The Circuit Judicial Conference Committee on Abolition of Mandatory Capital Punishment in the District of Columbia recommends that the Conference adopt the following resolution:

"Resolved by the Judicial Conference of the District of Columbia Circuit, That the Congress be urged to amend and supplement existing legislation in regard to the punishment for murder in the first degree in the District of Columbia in the following respects:

"(a) That the present provision (22-2404 District of Columbia Code) that 'The punishment of murder in the first degree shall be death by electrocution' be repealed.

"(b) That the punishment for murder in the first degree shall be imprisonment for life unless the jury by unanimous agreement shall add to its verdict of guilty a recommendation in the words 'with the death penalty,' and that in the latter event:

"1. The court may sentence the defendant to death by electrocution; or the court in its discretion may sentence the defendant to imprisonment for life, the jury's recommendation notwithstanding.

"2. Before imposing sentence, the court shall conduct such proceedings as may be provided by rule of court for the ascertaining and considering of all facts and circumstances relevant to the question of punishment; and be it further

"Resolved, That copies of this resolution be transmitted to the Judicial Conference of the United States and to the appropriate committees of the Congress."

NOTES TO ACCOMPANY RESOLUTION

1. The proposed legislation is in form like title 18, United States Code, section 1111, which is the statute of general Federal application, but differs in substance as follows:

(a) The proposed legislation would authorize the death sentence only if the jury recommend it; the general Federal statute compels the death sentence unless the jury recommend against it.

(b) Even if the jury recommend death, the court may reduce the punishment to life imprisonment.

2. The committee considered and rejected the proposition that a separate presentence hearing be conducted by the court with or without a jury. As a result, the death penalty can be recommended only on the basis of the evidence received at the trial—as in the case of rape under existing procedure. However, in determining whether or not to impose life imprisonment notwithstanding the jury's recommendation that the penalty be death, the court would have before it all the facts and circumstances relevant to punishment, as in other cases.

3. Legislation which would give the court authority to override the jury's recommendation of death in murder cases would create an inequality in comparison with the present rape statute, where no such power is given. However, this committee's jurisdiction is limited to the murder statute, which is the only one providing mandatory capital punishment.

"RESOLUTION OF THE JUDICIAL CONFERENCE OF THE DISTRICT OF COLUMBIA CIRCUIT

"Be it resolved by the Judicial Conference of the District of Columbia Circuit, That mandatory capital punishment should be abolished in the District of Columbia."

Adopted: May 22, 1959.

A true copy.

Teste:

JOSEPH W. STEWART,
Secretary of the Judiciary Conference of the District of Columbia Circuit.

"RESOLUTION OF THE JUDICIAL CONFERENCE OF THE DISTRICT OF COLUMBIA CIRCUIT

"Resolved by the Judicial Conference of the District of Columbia Circuit, That the Congress be urged to amend and supplement existing legislation in regard to the punishment for murder in the first degree in the District of Columbia in the following respects:

"(a) That the present provision (§ 22-2404, District of Columbia Code) that 'The punishment of murder in the first degree shall be death by electrocution' be repealed.

"(b) That the punishment for murder in the first degree shall be imprisonment for life unless the jury by unanimous agreement shall add to its verdict of guilty a recommendation in the words 'with the death penalty,' and that in the latter event:

"1. The court may sentence the defendant to death by electrocution; or the court in its discretion may sentence the defendant to imprisonment for life, the jury's recommendation notwithstanding.

"2. Before imposing sentence, the court shall conduct such proceedings as may be provided by rule of court for the ascertaining and considering of all facts and circumstances relevant to the question of punishment; and be it further

"*Resolved*, That copies of this resolution be transmitted to the Judicial Conference of the United States and to the appropriate committees of the Congress."

Adopted: November 24, 1959.

A true copy.

Teste:

JOSEPH W. STEWART,
Secretary of the Judicial Conference of the District of Columbia Circuit.

REPORT OF THE COMMITTEE ON ADMINISTRATION OF CRIMINAL LAW, MARCH 1, 1960

To the Chief Justice of the United States, Chairman, and the Members of the Judicial Conference of the United States:

A meeting of the Committee on the Administration of Criminal Law was held on October 15, 1959, in the chambers of Judge Kaufman in New York City, attended by Judges Boldt, Clayton, and Kaufman, and the committee chairman, Judge Smith. A subsequent meeting of the full committee was held on January 14, 1960, in the Administrative Office of United States Courts, Washington, D.C., attended by Judges Bazelon, Boldt, Burke, Clayton, and Kaufman, and the committee chairman, Judge Smith. The committee secretary, Mr. Carl H. Imlay of the Administrative Office, attended both sessions.

The committee submits the following report:

* * * * *

2. ABOLISHMENT OF MANDATORY CAPITAL PUNISHMENT UNDER THE DISTRICT OF COLUMBIA MURDER STATUTE

There was referred to the committee for consideration S. 2083, 86th Congress (a bill to abolish the mandatory capital punishment provision of the District of Columbia murder statute), and a draft bill submitted by U.S. Attorney Oliver Gasch. S. 2083 would amend the murder section of the District of Columbia Code to provide:

"SEC. 801. PUNISHMENT.—The punishment of murder in the first degree shall be death by electrocution unless the jury recommends life imprisonment. A jury finding a person guilty of murder in the first degree may, as a part of its verdict, recommend that the defendant be imprisoned for life. Upon the recommendation, the court may sentence the defendant to imprisonment for life. The punishment of murder in the second degree shall be imprisonment for life, or for not less than 20 years."

The draft bill submitted by U.S. Attorney Gasch would amend title 18, United States Code, section 1111, so as to make it applicable in the District of Columbia. This draft bill would also make the basic Federal murder penalty life imprisonment unless the jury recommends the death penalty, in which case the court may give either sentence.

These matters were considered at the October 1959 meeting of the committee, particularly in light of the "Report of the Circuit Judicial Conference Committee on the Abolition of Mandatory Capital Punishment in the District of Columbia." This report was accompanied by a resolution adopted by the Judicial Conference of the District of Columbia Circuit.

At the January 1960 meeting of your committee S. 2083 was disapproved. The draft bill submitted by U.S. Attorney Gasch was also disapproved primarily because it vests in the appellate court a power to commute the death sentence, despite a prior provision in the same subsection leaving the determination of sentence to the trial court on the recommendation of the jury. A study reveals that there is no comparable provision in the existing law, title 18, United States Code, section 1111.

The resolution of the District of Columbia Circuit Conference was, however, unanimously approved at the January 1960 meeting and a draft bill prepared by a committee of the circuit conference to give effect to that resolution has since been approved by your committee. A copy of this draft bill is attached to this report, and is recommended for approval by the judicial conference.

DRAFT BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 801 of the Act entitled "An Act to establish a code of law for the District of Columbia," approved March 3, 1901 (31 Stat. 1189, 1321), is amended to read as follows:

SEC. 801. PUNISHMENT.—The punishment of murder in the first degree shall be life imprisonment unless the jury by separate unanimous vote recommends the death penalty. Upon such recommendation the court shall conduct such proceedings as may be provided by rule of court for considering and ascertaining facts relevant to the question of punishment. Following such hearing the court may sentence the defendant to death by electrocution or the court may in its discretion sentence the defendant to imprisonment for life notwithstanding the jury's recommendation. In the absence of a jury recommendation the court shall sentence the defendant to life imprisonment.

A person convicted of first degree murder and upon whom a sentence of life imprisonment is imposed shall not be eligible for parole until the expiration of 20 years from the date he commences to serve his sentence notwithstanding the provisions of section 4202 of title 18, United States Code, and section 203 of title 24, District of Columbia Code.

Whoever is guilty of murder in the second degree shall be imprisoned for life or not less than 20 years.

Any provision of existing law inconsistent with the foregoing is hereby repealed.

CUBAN PRESS FREEDOM ENDANGERED

Mr. KEATING. Mr. President, the committee on freedom of the press of the Inter-American Press Association recently filed a report concluding that, with only two exceptions, the Spanish language press of Cuba has "either directly or indirectly, physically passed into the hands of the Government there, or has become so intimidated that it cannot be considered free."

The report also points out that:

It has become increasingly dangerous for foreign correspondents to perform their legitimate journalistic missions in Cuba.

The two Spanish language newspapers in Cuba still considered free are "Diario de la Marina" and "Prensa Libre" of Havana. According to the committee's report, both these papers "are being constantly attacked and smeared by Cuban Government officials and their propaganda machinery as 'counterrevolutionary.'"

These developments in Cuba are very distressing. A free press is one of the bulwarks of any democratic system, and the attempt to subjugate freedom of the press, by the same token, is one of the hallmarks of every tyrant.

The committee's action emphasizes the awareness of the other nations of Latin America of the growing loss of freedom in Cuba. My heart goes out to the Cuban people, who have been our traditional friends and good neighbors, but who have not been permitted to enjoy the blessings of liberty.

Cuba's lack of a free press makes it virtually impossible for the Cuban people to get the facts about what is happening in their homeland. In view of these conditions, it is imperative that the United States embark on a truth campaign which will bring our side of the story to Cuba. The announcement that the Voice of America will beam 1-hour Spanish-language broadcasts to Cuba certainly is a good start in this direction, and I hope that it will be supplemented by more extensive efforts by our Government.

SUSPENSION OF NUCLEAR TESTING

Mr. ANDERSON. Mr. President, at the Geneva Conference on the Discontinuance of Nuclear Weapons Testing, the Soviets presented, on March 19, a proposition they hailed as a great concession which would break the long deadlock in negotiations. It is, they claim, a way to handle the fact that known detection schemes have limited capability to identify most underground shots. Yet a brief analysis shows that the new offer has the appearance of a phony. It is again an attempt to secure U.S. agreement binding the United States against all testing regardless of whether the agreement can be inspected.

It will be remembered that the U.S. representative at the Geneva Conference, presented, on February 11, a proposal to take account of the fact that smaller underground tests are not detectable. The United States proposed that there be agreement to end tests in the atmosphere, in the oceans, in space up to altitudes where effective controls can now be agreed, and underground for shots giving a signal above a threshold value. This approach was the last of a series of U.S. offers attempting to broaden the agreement to cover all testing which could be adequately monitored. As did earlier U.S. proposals, it recommended that there be a joint research program to improve to the extent possible detection methods, and that the treaty be broadened as detection capabilities are improved.

And how have the Soviets responded to this? They have made a great play of saying that they accept the threshold figure for the seismic signal. However, they insist that there must be an agreed moratorium on all shots less than the threshold and for a period of several years. Interesting, too, they still insist that the number of onsite inspections is a matter for political decision. It has been their longstanding approach that only a very few onsite inspections would be permitted, regardless of the number required for adequate control.

Again the United States is asked to buy a "pig in the poke." We are asked to forgo testing and to accept a totally inadequate inspection system. We are asked again to agree to a system based

largely on trust of the Soviets rather than real controls. If this latest proposal is representative of Soviet intent for the 10-power disarmament conference now starting, it augures poorly for the future of disarmament.

As will be remembered, the President announced on December 29 that further suspension by the United States on testing would be on a day-to-day basis. I commented publicly at the time that I believed that this was a wise approach. I pointed out also that it would be unwise to devote additional weeks to fruitless conferences. This is still my strong opinion. To continue discussions on such a basis merely allows them to have the moratorium they want, and with no inspection. They have through procrastination and maneuvering succeeded in dragging on negotiations and securing a moratorium for 16 critical months, with no controls. If the Soviets will not approach test negotiations realistically we should terminate the conference. We should not allow them to prolong this delay month after month by successive new proposals which differ only insignificantly one from the other.

Yesterday I prepared a brief statement with reference to this proposal, which I ask to have printed in the RECORD at this point as a part of my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR CLINTON P. ANDERSON, DEMOCRAT, OF NEW MEXICO, ON RUSSIAN TEST BAN PROPOSAL

I would be very much surprised if the United States were to agree immediately to this recent Soviet proposal. Our representatives may find that it is a tactical shift on their part merely to accomplish what they have been striving for all along. The Soviet Union over the years has attempted to get us to agree to an all-inclusive test ban, without any inspection provisions to go along with it.

In my opinion, we must be careful that we do not agree to something which (because it does not provide for adequate controls) will permit the Soviet Government to advance their own nuclear weapons through testing yet prevent the United States from testing its weapons. I am particularly concerned with the so-called "honor system" the Russians propose for small tests, which will continue while the scientific basis of detection is studied. The big question here is whether the Russians are making this proposal in good faith. As late as December 1959, at the conclusion of the Technical Working Group II, the Soviet scientific representatives attacked the integrity and competency of our scientific representatives. They accused Dr. Fisk and his associates of manipulating and making misrepresentations. Now all of a sudden they propose to further review this material, and engage in joint research and experimentation, meanwhile stopping us on testing via the "honor system."

I am also concerned that the Soviet proposal leaves no room for conduct of underground tests of explosives for peaceful purposes—our Plowshare project for instance. We should be permitted to make underground tests for power purposes, and for developing oil and mineral deposits. No contamination of the atmosphere would result. We should permit full international inspection and surveillance of such tests.

I believe, however, we should negotiate on the Russian proposal in good faith, to see how sincere they are. To the extent that the Russian statement recognizes the distinction between those tests that can be detected and those that cannot, I believe that some progress has been made. The U.S. delegation has for a long time been attempting to obtain recognition of this fact and its scientific basis. But to tie this to an "honor system" on ceasing all tests may be going too far. We should retain the right unilaterally to continue or discontinue a test ban on underground tests of small nuclear explosives.

Mr. ANDERSON. Mr. President, today I received a telegram which I think is significant and typical of a great many telegrams which are being received. The telegram reads:

NEW YORK, N.Y., *March 22, 1960.*
Hon. CLINTON P. ANDERSON,
Senate Office Building,
Washington, D.C.:

Cannot understand why press and State Department spokesmen describe new Soviet atomic test plan as going far to meet American view. On analysis it merely formulates basic Soviet position. Soviets have always wanted test ban without controls. It is now clear that only area where controls are needed is precisely in area of small underground tests where controls are now impossible. Therefore voluntary banning of the underground tests as now proposed involves absolutely no change in Soviet policy.

Key issue between Soviets and ourselves on disarmament as well as atomic testing is our refusal to accept agreements on faith with adequate inspection and control. Therefore to accept this Soviet test plan even temporarily would set dangerous precedents by abandoning our basic disarmament principle in key area.

Regret such a retreat all the more (a) because continuation of underground testing without fallout would strengthen America's military and moral position by producing smaller and cleaner defensive atomic weapons needed to counterbalance overwhelming Soviet ground force superiority; (b) we would be surrendering this military advantage in return for easily breakable Soviet promise; (c) by weakening our relative military position we would reduce our bargaining power to achieve really controlled disarmament; (d) announcement of such a test ban agreement would create illusion of progress where none exists, thus encouraging dangerous complacency. Warm congratulations on your statement expressing some of above considerations today.

I have received a great many messages which I should like to read in that connection. However, I do not intend to do so.

I point out that there have been many periods of recess in the Geneva Conference—from December 19, 1958, to January 5, 1959; from March 20, 1959, to April 13, 1959; from May 12, 1959, to June 8, 1959; and from August 27, 1959, to October 12, 1959.

I point out again that if the Soviet people were determined to negotiate with us, we could have had something better than we had during the first weeks of the conference.

When the conference met, 6 weeks were devoted to discussing the form of the charter which might subsequently be signed. Russia demanded two separate documents, first, a treaty calling for cessation of all tests; and second, a protocol setting forth the enforcement plan.

The United States and the United Kingdom insisted upon one document, because had we signed the first agreement, the Soviets could have negotiated for 10 years on the second agreement, and had exactly what they have desired from the beginning, namely, suspension of nuclear tests without any possibility of control and no possibility of inspection.

It required 6 solid weeks of discussion to reach an agreement that those two agreements might be incorporated into a single document.

When we consider the latest Russian proposal, we had better consider it in the light of what has thus far been taking place at Geneva. We had better consider it in view of the fact that the proposal the Russians have made to us is almost exactly the proposal which they have been making right along, namely, that tests be suspended for a period of 6 years without any controls and without any system of inspection, depending only upon some honor system to bring about compliance.

I believe that the Atomic Energy Commission, the State Department, and even the President of the United States would be well advised to take a very good look at this proposal before there is any early acceptance of it.

CITATION OF SENATOR SPARKMAN FOR DISTINGUISHED SERVICE BY AMERICAN VOCATIONAL ASSOCIATION

Mr. HILL. Mr. President, my able colleague, Senator JOHN SPARKMAN, was honored last week with a citation for distinguished service by the American Vocational Association. This is a fine honor from a great association, and I extend congratulations both to Senator SPARKMAN and the American Vocational Association.

For the occasion of the award, my distinguished colleague prepared for delivery an excellent speech. I ask unanimous consent that the speech be printed in the body of the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

SPEECH PREPARED FOR DELIVERY BY SENATOR JOHN SPARKMAN AT ANNUAL MEETING OF ALABAMA VOCATIONAL ASSOCIATION, PHILLIPS HIGH SCHOOL AUDITORIUM, BIRMINGHAM, ALA., THURSDAY, MARCH 17, 1960

Madam Chairman, members of the Alabama Vocational Association, and friends, of course I feel honored to be awarded this citation. While I may not deserve it, nor the generous and flattering wording of it, I accept it with pride. You may be sure that I shall treasure this honor, and be grateful to your outstanding organization, the American Vocational Association, for its liberal acknowledgment of my efforts.

Especially do I want to express appreciation to the Alabama Vocational Association for its part in the awarding of this citation and also to your national executive secretary, Dr. M. D. Mobley, for his interest and friendship. Many of you, including your most capable State director, Bob Cammack, are my warm personal friends. All of us are comrades working for the same just cause.

And I am sure I do not need to tell you what an able and effective advocate your

executive secretary is. He knows what to do, when to do it, and how to do it. It is always a pleasure to work with him.

It is a real pleasure to be in your midst and a privilege to have a part on your program.

Through the years I have watched with interest and justifiable pride the valuable contributions that members of this group have made to the economic well being of our State. You and your counterparts in other States of the Nation have for many years contributed immeasurably to our Nation's military defense and to our economic security.

Through high quality instruction, the vocational forces of our Nation have helped the masses acquire invaluable technical and scientific knowledge and skills. As a result the United States has become the most powerful and the most productive nation in the world today. This productive ability of our people has been a powerful contributing factor in the maintenance of peace.

We all are indebted to you. But you must have the tools and the determination to push forward at an increasing pace. Never in the history of our Nation has there been such a great need for high quality effective programs of education including vocational education as exists at this very moment.

Production techniques and technology are changing at an ever-increasing rate. This calls for expanded and improved vocational education for both youth and adults—especially in those rapidly changing occupational fields.

In the years ahead there will be fewer and fewer unskilled workers and more and more highly skilled workers. The hope of present workers, and youth preparing for jobs in the years ahead, is to acquire technical and scientific knowledge and production skills. This is essential if they are to hold jobs, obtain jobs or advance in their chosen field of work.

Another reason why an adequate program of vocational education is greatly needed in the United States is due to the Communist economic challenge to this country, particularly from the U.S.S.R. Russia's Khrushchev has made known in clear and certain terms that the Soviets have a plan to lick the United States in an economic war. Some people are prone to ignore Russia's boasted economic plans. Though I am confident we can keep ahead of Russia, if we plan and execute our plans intelligently, I do not think we can afford to ignore her challenge or to take it lightly.

It is now a well known fact that our leaders at the national level have dangerously underestimated the ability of the Soviets to develop and produce atomic weapons and intercontinental ballistic missiles and to develop and produce space satellites. According to some top past and present governmental officials—authorities in a position to know—Russia has moved ahead of us in some categories and threatens our entire leadership in these fields.

We must not as a nation be lulled into believing that Russia has no chance of overtaking or surpassing us in the economic field. We must not underestimate her ability and her potentiality in the production of goods for sale in the markets of the world. Not long ago Khrushchev said to an American newspaper publisher, and I quote:

"We declare war upon you—in the peaceful field of trade. We declare a war we will win over the United States. The threat to the United States is not the intercontinental ballistic missile, but in the field of peaceful production. We are relentless in this, and it will prove the superiority of our system."

In his speech to the Economic Club of New York during his visit to this country last September (1959) Khrushchev said, and I quote:

"All of you are well aware of the fact that we are offering you economic competition. Some describe this as our challenge to the United States of America. But, speaking about challenges, one might say, and that would be even more correct, perhaps, that it was the United States that first challenged all the world; it is the United States that developed its economy above that of all countries. For a long time no one dared to challenge your supremacy. But now the time has come when there is such a state which accepts your challenge, which takes into account the level of development of the United States of America and in turn is challenging you. Do not doubt that the Soviet Union will stand on its own in the economic competition, will overtake and outstrip you."

I do not claim Khrushchev's statements are true or that Russia will overtake and outstrip the United States in economic competition but his statements do reveal Soviet goals. To disregard them or to fail to meet the vigorous challenge would be dangerous and foolhardy.

The October 6, 1959, issue of the New York Times quotes Seymour Melman, associate professor of industrial management and engineering at Columbia University and a consultant on production techniques as saying that Russian plants are producing machine tools—the basic instruments of industrial production—with less than half the man-hours required in comparable Western operations.

Mr. Melman according to the New York Times spent part of September and August of 1959 in Russia studying industrial production methods.

The U.S. Bureau of Mines reported on November 12, 1959, that the Soviets are now the top producer of coal and iron ore. The United States had held the lead in coal production since 1899. These examples of Russian economic progress—and there are many more—are striking proof that we face a determined and able competitor.

As a part of Soviet economic plans, Russia is now in the process of reorganizing its entire system of education, which is scheduled to be completed by 1963. The new reorganization law, approved in late 1958, calls for a vastly expanded vocational education program.

Contrary to much recent publicity in this country, Russia's education program consists of more than just instruction in science, mathematics, and languages. Intense emphasis is being placed on vocational education—patterned somewhat after the vocational program we have been developing in the United States during the past 40 years. Over a period of some 20 years the Soviets have been enlarging their vocational education programs, but in the last year and a half they have made tremendous strides in this direction.

It would seem comical were it not such a serious matter—involving the security of our American way of life—that a few uninformed and misguided people are advocating that we adopt—at least in part—the Russian system of education of the immediate past. The truth is that this is a system that the Soviets themselves are now in the process of abandoning.

The Soviet leaders believe that their hope in winning an economic war is dependent in large measure on the skill and productivity of its people, and that these abilities must come through vocational training for the masses.

For some months Russia's Mikoyan and Khrushchev have been visiting many countries throughout the world in an effort to expand Soviet trade and to capture markets, some of which have been held for years by the United States. Mikoyan's recent trip to Mexico and Cuba are illustrations of this. Khrushchev only a few days ago was in several countries in the Orient.

Yet in spite of these developments which pose as serious threats to the survival of our Nation and to the economic security of our people, there are some in this country in high places of authority who would cripple and destroy our programs of vocational education. This is evidenced by the recent recommendation of President Eisenhower's Budget Bureau proposing a cut of $2 million in title I, George-Barden funds.

Congress, of course, will see to it that his recommendation is not carried out but his proposal to cut the funds is evidence of the fact that there is lack of understanding in the White House of the important role vocational education has played, is playing and will continue to play in the years ahead in making our Nation militarily and economically secure.

If we are to maintain our present economic superiority over Soviet dominated countries and at the same time maintain a high standard of living for the masses of our people—such as they enjoy today—we must constantly seek ways to improve the knowledge and skills of our people and to improve production methods so that the output man for man of our workers will continue to exceed theirs.

This situation cannot be maintained without a sound, effective, and ever expanding program of vocational education.

It was in realization of these facts that I took the lead in 1952 and again in 1956 to include a plank in the national Democratic platform pledging support of the Democratic Party to the further development and improvement of vocational education. I am told by some of your leaders at the national level, including your own M. D. Mobley, that had it not been for these planks in the party's national platform it would have been very difficult if not impossible to secure approval of the practical nurse training measure in 1956 and the area vocational education measure in 1958.

Without these planks, I have been told, it would have also been next to impossible to hold Federal funds for vocational education. At least some substance is given this claim by the fact that virtually every year during the last 7, President Eisenhower has recommended drastic cuts in the appropriation for vocational education or the repeal of all vocational education acts.

How anyone who has any reasonable knowledge of our Nation's military needs and economic problems could make recommendations that would cripple or destroy vocational education is more than I can understand.

I delight in telling you that in spite of his recommendations to cut vocational funds and to repeal vocational education laws, Congress has increased appropriations under the George-Barden Act by almost 120 percent and has increased authorizations for vocational education by approximately 70 percent.

Such action speaks louder than any words that can be uttered regarding support of your program by the Congress.

It is my considered opinion that so long as you maintain sound, effective, worthwhile programs, such as you have today, Congress will continue to deal fairly with you and will continue to appropriate Federal funds to promote and support your program.

Certainly this shall continue to be my policy. In this respect I want to assure you—not that you need such assurance—of my warm support of a measure introduced by my distinguished colleague and your strong friend Senator HILL. I refer to S. 3025 to extend the program for practical nurse training and to remove the restrictive language confining funds to "extension and improvement." I shall cooperate fully with LISTER in obtaining passage of this measure. I will continue to push for the passage of other legislation in behalf of vocational education.

Let me say again that I shall ever be grateful for the recognition that has come to me today from your great and dedicated national organization.

This citation will serve as a constant reminder of my interest in and support of your program in past years; moreover it will serve as a stimulant to me to do more and work harder in the future to help you maintain the support you need to carry on your work in the days and years ahead.

It has been good to be with you and I bid you God's speed in your work.

PRESENTATION OF STATUE OF SENATOR PAT McCARRAN

Mr. BIBLE. Mr. President, it is my privilege to extend to the Members of the U.S. Senate, their staffs, both office and committee, officers of the Senate and their staffs, Capitol employees, and all others who were friends of the late Senator Pat McCarran, of Nevada, a most cordial invitation to attend the presentation of the Statue of Senator Pat McCarran, by the State of Nevada, to the United States of America. The ceremony will be held tomorrow afternoon, Wednesday, March 23, at 2 p.m., in the rotunda of the Capitol. Cardinal Spellman will deliver the invocation; our good Chaplain, Dr. Frederick Brown Harris, will give the benediction. The Governor of my own State of Nevada, the Honorable Grant Sawyer, will present the statue, and our Lieutenant Governor, the Honorable Rex Bell, will participate in the ceremony, together with the majority and minority leaders, and the Nevada congressional delegation, my colleagues, Senator Howard Cannon and Representative Walter Baring, and myself.

Mrs. McCarran and members of her family will be present, and they join me in extending this invitation to those who would like to attend. No admission card is necessary. Following the ceremony, a short reception will be held in the Old Supreme Court Chamber, to which a cordial invitation is also extended.

Mr. MANSFIELD. Mr. President, is morning business concluded?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

LEASING OF PORTION OF FORT CROWDER, MO.—CIVIL RIGHTS

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 8315) to authorize the Secretary of the Army to lease a portion of Fort Crowder, Mo., to Stella Reorganized Schools, R–I, Missouri.

The PRESIDING OFFICER. The question is on agreeing to the Javits-Clark amendment to the Dirksen substitute.

Mr. KEFAUVER obtained the floor.

Mr. RUSSELL. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I yield.

Mr. RUSSELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADMINISTERED PRICES IN THE DRUG INDUSTRY

Mr. KEFAUVER. Mr. President, I ask unanimous consent that certain tables, brief memorandums, and a few editorials may be printed in the RECORD at the places to be indicated in my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KEFAUVER. Mr. President, I want the RECORD to show that the office of the minority leader [Mr. DIRKSEN] was notified by the chairman of the Antitrust and Monopoly Subcommittee, as were also the offices of the Senator from Wisconsin [Mr. WILEY], the Senator from Nebraska [Mr. HRUSKA], and the Senator from Maryland [Mr. BUTLER], that I was to make this statement today, because, either on the floor or in committee, they have been critical of the work of the subcommittee. I had hoped they would be present to discuss any matters they desired to, or to ask any questions, and to follow my speech as I delivered it. I hope they will come to the Chamber before I conclude my remarks.

Certain statements were made by some of them on the floor of the Senate, and I had not received notice they would make such statements, or I would have been present to answer them.

On December 7, 1959, the Antitrust and Monopoly Subcommittee resumed its hearings on administered prices by beginning a study of pricing practices of the drug industry.

GENERAL ADMINISTERED PRICE HEARINGS

Since the middle of 1957 when this subcommittee began its inquiry into administered prices, detailed examinations of the pricing practices in steel, automobiles, bakery products as well as certain aspects of the problem in the petroleum industry have been inquired into. There have now been published eight volumes of hearings, together with two subcommittee reports on individual industries. In addition, the subcommittee has issued three volumes of hearings consisting of testimony on the general nature of the problem of administered prices and the alternative courses of public policy by leading economists who have specialized on this subject. The subcommittee has heard testimony from the heads of the antitrust agencies in an attempt to determine what those agencies can and cannot do to meet the problem. The subcommittee has also held hearings on important legislation designed to meet the problem of administered prices.

PRICE COMPETITION THE QUESTION

In view of the prior hearings it can be seen that the examination of manufacturers' pricing practices in the drug industry was nothing more than the same type of examination which the subcommittee has accorded to the steel, automobile, and bread industries; an examination made necessary by the obvious decline in the vigor of price competition. During the course of its other administered price hearings the subcommittee received hundreds of requests from the public generally that it inquire into the high prices charged for ethical drug products and the lack of price competition. In planning the subcommittee's program for 1959 there was included therein a request for funds to make studies in a number of industries, among which was the drug industry. This program was approved unanimously by the Subcommittee on Antitrust and Monopoly as well as by the Committee on the Judiciary. On February 2, 1959, Senate Resolution 57, together with a program and budget for the Antitrust and Monopoly Subcommittee, was agreed to and passed by the Senate. After engaging in preliminary staff work and finding a need to obtain the services of specially trained personnel for the subcommittee's investigation of the pricing practices of manufacturers of drug products, an additional $30,000 of funds were requested by the subcommittee and were finally agreed to by the Senate on August 7, 1959, by the passage of Senate Resolution 144. Although the manufacturers' pricing practices in the drug industry are extremely complex, the staff work had progressed to such a stage that on December 7, 1959, the subcommittee began its hearings.

WONDER DRUGS UNAVAILABLE TO MANY WHO NEED THEM

While this country has the best drugs in the world, it appeared from the great number of letters which the subcommittee had received that many of our citizens are experiencing difficulty in being able to purchase them. It was the purpose of the subcommittee to inquire into the question of whether the drug manufacturers are setting their prices at excessive levels, as the writers of these letters contend. It was also the purpose of the subcommittee—it being a legislative subcommittee—to determine whether the antitrust laws as applied to this industry are adequate and, if not, to devise specific remedial legislation.

The question might very well be asked: Why is it necessary to go into another industry in the administered-price series, and why particularly drugs? To the first part of the question, the answer is obvious. The problem is one of almost incredible difficulty and complexity. What in essence the subcommittee is seeking to determine is whether the public is adequately protected by competition, and, if not, to devise some legislative remedy.

The subcommittee has heard many experts who have spent their lives studying this very same problem. While in general agreement as to its nature, these experts were poles apart as to its solution.

REASON FOR EXAMINING THE DRUG INDUSTRY

As to why specifically the subcommittee is studying drugs: In the first place, most drugs would appear to fall clearly within the definition of administered

prices. Their prices are set, not by the changing forces of supply and demand, but by administrative decision, and are held constant over periods of time—often extended periods of time. In embarking on the drug study it was the intention of the subcommittee to inquire how these prices are set and maintained. The question was presented of how a drug company can establish and then maintain for years price structures which result in the druggist paying approximately 30 cents for an antibiotic pill and 18 cents for a steroid hormone pill.

Certainly the drug industry is an important industry simply in terms of total size. Sales of ethical drugs which are sold by prescription are running at around $2¼ billion a year at the manufacturers' level. To this can, and should be, added more than a half billion dollars for proprietary drugs that are sold over the counter. At the retail level, of course, the figures are considerably greater. Drugs are peculiarly an essential of life. Confronted with financial reverses, the average family can and does put off buying automobiles, household appliances, clothes, and even food, but they cannot put off buying drugs. The consumer's ability to shop around for a lower price in the drug industry is severely restricted by the fact that prescriptions are usually written in terms of trade names rather than generic names. Although, as I shall later illustrate, there are lower priced brands of the drug prednisone available from reputable, often long-established drug manufacturers, the consumer given a prescription for Meticorten—Schering's name for prednisone—cannot be sold anything else. The fact is that if the druggist were to substitute a lower price brand of prednisone, he would find himself in violation of State law. There is thus in ethical drugs an intermediary between the producer and the buyer, namely, the physician who writes the prescription. As a consequence, the drug industry is unusual in that he who buys does not order, and he who orders, does not buy. The ethical drug industry is also unusual in another respect. The consumer is completely captive. If he is sick, he must buy what the doctor orders. Unlike the case of automobiles, he cannot shop around for a different model or a lower price. In instituting its drug price study the subcommittee was aware that the drug industry is honeycombed with patents and license agreements. It is not my purpose to criticize the American patent system as a general incentive to innovation and progress. However, it has been well settled by court decisions that the monopoly conveyed to a patent holder does not give him the right to fix his licensee's prices, or otherwise restrict trade in violation of the antitrust laws.

INVESTIGATION LIMITED TO MANUFACTURERS' LEVEL

On the opening day of the drug price hearings, as chairman, I stated very definitely that it was the intention of the subcommittee to confine its study to the manufacturers' pricing practices in the ethical drug field. As in the case of retailers in other administered price industries studied by the subcommittee, I made it perfectly plain that the subcommittee would make no attempt to appraise the reasonableness or unreasonableness of the margins of the retail druggists. Some critics of the retail drug trade have contended that the retailer's margin is excessive; a charge which is denied by spokesmen for the retail druggists, who point to rising costs including the inventory costs of stocking the same drug product under a variety of different trade names. Such a controversy is not directly related to the problem of administered prices. The retailer's margin in percentage terms is more or less constant, being applied on top of the manufacturer's price. What the subcommittee is interested in is the price to which this relatively stable margin is affixed, namely, the manufacturer's price to the druggist.

It was also made plain that it was not the purpose of the drug hearings to question in any way the American system of private medical practice. The subcommittee's interest is not with the issue of group versus private practice, or with the adequacy of reasonableness of the various forms of prepaid health or insurance plans. The subcommittee's interest is simply with the price of drugs, a price which must be paid by someone under any system of medical care. In this connection, I wish to point out that the subcommittee has received several hundred letters from doctors which are critical of the price of drugs and also critical of what they regard as excesses in the promotion and selling activities of the drug manufacturing companies.

DRUG HEARINGS: COMPLETED AND PLANNED

In order to arrive at an understanding of the practices of the drug manufacturing industry, the subcommittee sought information and material from the industry in several product fields. These fields included hormones, tranquilizers, diabetic drugs, antibiotics, sulfa, certain prescription vitamins, and so forth. These fields were selected because the total sales of these product classifications approximated two-thirds of all sales and because they represent the important areas of new products. In addition to these product hearings, it was also the announced intention of the subcommittee to hold a series of general hearings, at which time the industry's general views would be heard, as well as those of the representatives of the medical profession generally, and information would be sought on the activities of related Federal agencies.

Thus far the subcommittee has completed its hearings on steroid hormones and tranquilizers, and has held one series of general hearings. The first of the series of general hearings, due to an objection having been lodged by the minority leader, who is also the ranking minority member of the subcommittee, to the subcommittee's sitting while the Senate was in session, was recessed on Friday, February 26, at 10 a.m., subject to the call of the Chair.

In that connection, when objection was made to the subcommittee's sitting while the Senate was in session, even though there might not have been any votes imminent, we undertook to sit late at night from 10:30 p.m. to 2 a.m., resuming early in the morning at 9:30 a.m. That procedure was hardly satisfactory either to the subcommittee members or to the witnesses.

We expect to resume our hearings as soon as the situation in the Senate permits because of the great public importance of the question.

It is my purpose to review some of the information and material that has thus far been received by the subcommittee.

THE NATURE AND IMPORTANCE OF STEROID HORMONES

On December 7, 1959, the first product hearings concerned the steroid hormones—cortisone and its derivatives. The first of the steroid hormones was cortisone, which was followed by hydrocortisone, prednisone, prednisolone, and such new variations as triamcinolone and dexamethasone. According to Norman Applezweig, a recognized authority, the first large-scale commitment in cortical steroid research in this country was taken by the Merck Co. during World War II under a program of the Office of Scientific Research and Development, then headed by Dr. Vannevar Bush, now chairman of the board of Merck. This work was started on the erroneous belief that the Germans were successfully using an adrenal hormone product to protect their fliers from the effects of high altitude. The discovery of the anti-inflammatory action of cortisone in rheumatoid arthritis by Drs. Hench and Kendall at Mayo Institute, working on a grant from Merck, was a stunning result.

Dr. Hench, Dr. Kendall, and also a Swiss doctor, Dr. Reichstein, are Nobel laureates because of their work on cortisones. We are all proud of them and congratulate them.

Steroid hormones are used for many purposes, including the treatment of allergic disorders such as bronchial asthma and the reactions to other drugs; inflammatory diseases of the eye; skin diseases; blood diseases such as pernicious anemia; kidney diseases, and so forth; but their most widespread use is in the treatment of rheumatic diseases. It is estimated that roughly 10 million Americans are afflicted with rheumatic disorders—about 1 person in every 18 of our population. About 1 million are permanently disabled. Rheumatoid disease has become known as the No. 1 crippler. It strikes more people than cancer, heart disease, and tuberculosis combined.

While these drugs do not effect a cure, their importance should not be minimized. They relieve arthritic patients for periods of time and help control attacks. At the same time their use has been restricted by the medical profession because of injurious side effects. When cortisone first came on the market it appears that it was widely used for many purposes and with high expectations, but that continued experience brought much disillusionment and

far greater caution and restraint. Although the drugs introduced since cortisone have represented a marked improvement—particularly prednisone and prednisolone—side effects remain a serious problem.

The importance of the steroid hormones can be seen from the fact that in 1959 their sales are estimated to be $120 million at the manufacturers' level, divided as follows: cortisones, $33 million; prednisone and prednisolone, $43 million; and triamcinolone and dexamethasone, $44 million.

IDENTICAL PRICES

The principal producers of steroid hormones in the United States are the Schering Corp., Merck & Co., Inc., and the Upjohn Co. Representatives of these companies were invited to testify at the steroid hormone hearings. The prices charged by each of these firms for each of the steroid hormones are identical and have been identical since 1956. For example, since 1956, each of these three companies has offered for sale cortisone acetate at identical prices.

Similarly since 1956 prednisone and prednisolone have been sold by these three companies for the identical price of $17.90 for 5-milligram tablets in bottles of 100. Even though Upjohn introduced a more efficient microbiological process, it has never reduced its price below the quotations charged by the other companies.

In contrast to the $17.90 price of the four major producers, small manufacturers sold this same product, meeting USP standards, to druggists for as low as $2 in bottles of 100.

In the rear of the Chamber, Mr. President, is a chart which shows that for prednisone, the important arthritic drug the prices to druggists by Merck, Upjohn, and Schering are identical at $17.90 per hundred. It also shows prices by a number of smaller companies whose products meet the U.S. Pharmacopoeia standards, most of whom having been examined and authorized to bid on Government contracts by the Military Medical Supply Agency. The prices by some of these smaller companies were in the range of $4 to $7 per hundred tablets.

Moreover, after this chart had been prepared and introduced we found that suppliers of prednisone and prednisolone were actually selling to druggists for less than $2 a hundred in contrast to the price of Schering, Upjohn, and Merck of $17.90.

It should be pointed out that having good equipment and good control methods is not the exclusive monopoly of the big companies. Many small companies have just as good equipment and control methods as the large companies.

BID PRICE TO GOVERNMENT PURCHASING AGENCIES

It was brought out in recent hearings that the Military Medical Supply Agency, as well as the Veterans' Administration have asked for competitive bids in steroid hormones by generic rather than by trade name.

The Military Medical Supply Agency purchases the drugs that are used by the Government at Walter Reed Hospital, the Naval Medical Center at Bethesda, and other Government hospitals throughout the United States. I am sure that patients in those hospitals would not be given any drugs that were not safe and effective.

In this connection I wish to pay my very high respect to the officers of the Military Medical Supply Agency, particularly to Admiral Knickerbocker and Commander Weiss, as well as to those in charge of purchasing for the Veterans' Administration. These men are true public servants and deserve support and commendation. They have tried to get competition, and thus secure reasonable prices to the U.S. Government. In this way they have saved the taxpayers of the United States millions of dollars. It has been to these large Government buyers, as well as to those hospitals which have established formularies that most small manufacturers have had to turn for their sales.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I am very happy to yield to the distinguished Senator from Ohio, who has taken a great interest in this entire problem, and has given me, as chairman of the subcommittee, useful information which has helped us in our work of trying to secure for the American people and the American druggists ethical drugs at reasonable prices.

Mr. LAUSCHE. Can the Senator from Tennessee tell me whether or not, in the testimony which was taken, it was shown that in the drug industry, sales made to governmental bodies such as the State of Ohio and the city of Cleveland, and probably to counties, under competitive bidding, are made at prices which are usually identical, to the fraction of a penny?

Mr. KEFAUVER. Where competition can be offered by smaller companies prices by the drug manufacturing companies in sales to the Government are sometimes one-fifth, one-sixth, or one-seventh of the price to druggists.

But where there is no competition from small companies, if the larger companies hold a patent monopoly, they generally bid at identical prices. On their bids their prices are high, even to the U.S. Government. An example is meprobamate, a tranquilizer sold by Carter Products under the name of Miltown. For sales in this country, Carter Products licenses only Wyeth, which is the pharmaceutical division of American Home Products Corp. Wyeth sells it as Equanil. Both companies are making enormous profits, largely from the sale of this product. On most of their sales to the Government the bid prices of Carter & Wyeth have been identical. It is remarkable to me that when their bids to the Government go up or down, the price of each is identical.

Incidentally, in the middle of our hearings the Department of Justice brought an indictment against Carter Products and American Home Products. It is my understanding that these identical prices were a factor leading to the indictment.

Mr. LAUSCHE. The indictment was predicated upon the fact that the prices at which they sold were identical.

Mr. KEFAUVER. That was a part of it. The allegation was that the prices were agreed upon.

Mr. LAUSCHE. During my tenure as mayor of Cleveland and as Governor of Ohio, one of the perplexing problems confronting me was the unbroken uniformity of the bids made on three things which the State and the city had to buy. Drugs were usually bid to the fraction of a penny, in identical amounts. Bids on salts to be applied to highways for melting snow and ice were all at identical amounts. The supply of electric light bulbs was also in that category. As I understand, the testimony disclosed that the practice was rather uniform.

Mr. KEFAUVER. Yes. We have held hearings on identical bidding in the case of electrical equipment companies. We found exactly what the Senator found; namely, that where bids are made to cities, to public power bodies such as the Tennessee Valley Authority, or to the Army and Navy, bids on electrical equipment have been remarkably uniform, usually down to the fraction of a penny. Here, too, our hearings were followed by the issuance of indictments for violation of the antitrust laws.

Let me cite one example, which is typical of other situations——

Mr. LAUSCHE. What explanation was given for the coincidence of prices, or for identical bids?

Mr. KEFAUVER. They said they were meeting competition. But it was beyond me how they knew what the other bidder's quotation was going to be, when the bidding was secret, and when the bids might be a little higher or a little lower than the previous price. Although the heads of American Home Products sought to create the contrary opinion, Government officials tell us absolutely that competitive bids are kept confidential, and that no bidder knows what another's bid price is.

Mr. LAUSCHE. I know that in bidding for electric light bulbs the State frequently had bids in which the prices were identical to the fraction of a penny. Based upon what the Senator from Tennessee has said, the explanation of such a bidder would be that it was by accident and by coincidence, without knowledge of what the other was doing that the bids happened to be identical.

Mr. KEFAUVER. That is correct. But the Department of Justice, quite properly, has not accepted this as an adequate explanation. The Senator says the bids on electrical equipment were identical down to the fraction of a penny. As a matter of fact, they were identical to ten-thousandths of a penny.

Mr. LAUSCHE. Yes.

Mr. KEFAUVER. Similarly the bids of the American Home Co., which sells Equanil, and of Carter, which sells Miltown, the bids to the Military Medical Supply Administration were $22.50 a thousand, or $20.50 a thousand. Yet whether the price went up a little or down a little, they were identical except in all but one case, where there was a difference of 10 percent.

Mr. LAUSCHE. I thank the Senator. I interrupted the Senator when he was

discussing the Military Medical Supply Administration seeking bids on nonpatented products.

Mr. KEFAUVER. Yes. I appreciate the participation of the Senator from Ohio. He has had great experience in this field as Governor of his State in the purchasing of medical products and other products. I hope he will ask further questions.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. LAUSCHE. I should like to say to the Senator from Tennessee that while his investigation was being conducted my mail was heavy from citizens in Ohio commending the Senator from Tennessee and trying to solve the problem of the high cost of drugs, as the facts were revealed by his investigation, and as it was understood by the sick people who had to buy the drugs.

Mr. KEFAUVER. I thank the Senator. We have also received a great deal of mail from people to whom the price of drugs is a real hardship. Some write that they even have had to do without food in order to get the drugs. We have received hundreds of letters from physicians who are interested in the economic welfare of their patients, and from many druggists who feel that prices which they have to pay to the manufacturers are too high.

The ethical drug manufacturing industry has a powerful propaganda machine, a great lobby and numerous public relations organizations. They have even used druggists to carry the burden of their fight against the work of our subcommittee. Our interest is in merely trying to see to it that the American people get these drugs at reasonable prices. I say that the prices these big companies charge for the products which we have thus far investigated are unreasonable. The American people should have the benefit of competition, which would mean lower prices.

I wish to call to the attention of the distinguished Senator from Ohio the chart in the rear of the Chamber which shows the prices of the large and small companies for the drug called prednisone. Had Schering, Merck, and Upjohn gotten together and agreed to sell prednisone to the druggists for $17.90 a hundred, that would be a violation of the Sherman Act, if the agreement would be proved.

But if the agreement cannot be proved, there is no violation of the antitrust laws. Yet from the viewpoint of the customer, the effect may be exactly the same, whether it happens by accident, by leadership, by some mental telepathy, by an understanding which, however, does not represent a formal agreement, or indeed by a formal agreement which cannot be proved.

To return to the matter of bid prices, although the four major producers charged druggists $17.90 per bottle of 100 5-milligram tablets, the records of MMSA reveal that as a result of the competition of small producers, the larger manufacturers have offered to sell to this agency at a considerably lower price than the price at which they sell to druggists. For instances, in February 1959 MMSA paid $20.98 per bottle of 1,000 5-milligram tablets on a low bid of the Premo Pharmaceutical Co., a small company. On this bid Schering's price was $23.63 and for this same bottle of 1,000 5-milligram tablets Schering and Merck's price to druggists is $170.

That is approximately, as I calculate it, 7½ times their bid price to the Government. Thus it would appear that manufacturers in a competitive sale will greatly reduce their prices.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. LAUSCHE. It is my understanding that when the Military Medical Supply Agency bought on the basis of bids from the companies identified on this chart——

Mr. KEFAUVER. And quite a number of others, too.

Mr. LAUSCHE. And quite a number of others, and competition was offered by small drug producers, the Military Medical Supply Agency of the Government bought the drug for $20.98 a bottle. Is that correct?

Mr. KEFAUVER. That is correct. That is for 1,000 tablets.

Mr. LAUSCHE. The druggists at the same time paid how much?

Mr. KEFAUVER. One hundred seventy dollars.

Mr. LAUSCHE. So that the Military Medical Supply Agency who knew the problem and asked for bids in the generic name, received a bid of $20.98 while the druggists had to pay $170 for the same drug. Is that correct?

Mr. KEFAUVER. That is correct. I think it should be pointed out that the small companies generally obtain their supply of the finished product in bulk form from the large producers. This is possible because a patent has not been issued on prednisone as yet. In these cases the product of the small companies is the same as that of the large companies. The small companies test the product and put it in tablets and into bottles.

Mr. LAUSCHE. With respect to the transaction described in the Senator's discussion of the bid price to Government purchasing agencies, the small drug company's price was $20.98. Schering's price was $23.63.

Mr. KEFAUVER. That was the price at which they offered to sell.

Mr. LAUSCHE. At the same time, the price of Schering and Merck to the druggist was $170 a bottle, or practically seven times as much as it was to the Military Medical Supply Agency of the Federal Government.

Mr. KEFAUVER. That is what the testimony showed; and the testimony is undisputed. However, I think I should point out that in the case of many drugs, where one company has a patent monopoly, and perhaps licenses one or only a few other large companies as in the case of Smith Kline & French, on Thorazine, or Carter, on Meprobamate, there are no small companies to cut prices. Here, the price under the generic name and the price under the trade name would be the same. And prices are high to the Government, high to the druggists, and are in the main identical.

Why don't consumers buy the lower priced products? The reason is that the doctors write their prescriptions in terms of trade names. The large drug manufacturers are able to persuade the doctors to do so because they have large sales forces of detail men and do extensive advertising and promotion. For reasons which I shall set forth later, the little companies cannot afford these selling and advertising expenses. As a result the little companies are largely confined to selling to the Government and to the hospitals under formularies.

Mr. GORE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield to my distinguished colleague from Tennessee.

Mr. GORE. Is it the practice of the medical profession to write prescriptions according to trade names or by medical content? I ask that question because from the experience I have had in paying for prescriptions, most prescriptions which I have observed heretofore have been written according to chemical detail as to the contents of a vial which the prescriptionist would, shall I say, mix or concoct or fill. Is it now the practice to prescribe by label or by patented name?

Mr. KEFAUVER. In general, the practice seems to be for the physician to write the trade name on his prescription blank.

The industry spends three-quarters of a billion dollars a year in advertising and selling expenses. A big item of selling expenses is the cost of sending out detail men to the physicians. Their function is to sell the doctors on the idea of prescribing by the brand-name of their particular company. And they appear to be quite successful, although there are some physicians who do prescribe by generic name.

Mr. GORE. If doctors should follow the practice of writing prescriptions according to chemical content, would the local druggist have an opportunity to fill such prescriptions with the pills or capsules supplied by the small drug companies and at a more reasonable price to the consumer?

Mr. KEFAUVER. In many cases, yes. In the case of prednisone, for instance, if the prescription were written in the generic name, the druggist would have the right to fill the prescription with a product of one of the smaller companies. Competition at the retail level would then result in lower prices to the consumer.

Prednisone is sold by Schering as Meticorten, by Merck as Deltra, and by Upjohn as Deltasone. These are the trade names usually specified in the doctor's prescription. As long as this remains the case, the customer will pay a relatively high price because the druggist cannot substitute a lower price brand.

Yet doctors who appeared before our subcommittee testified that they would have no hesitancy in prescribing by generic name, feeling that their patients would get just as good a product at a much lower price.

Nonetheless, the large companies, by their advertisements and their representations to the doctors, have convinced many physicians that there may be something superior in quality or efficacy in their products. This is a matter which the subcommittee is going to examine at greater length.

Many small companies have been inspected and examined by the Military Medical Supply Agency or by the Veterans' Administration with respect to the process or method of manufacture, sanitation facilities, and the efficacy and safety of their products.

If Senators and Cabinet members who are patients at Walter Reed or the Naval Medical Hospital can be administered drugs which the Government buys under the generic name, is that not a strong indication that the Government is convinced that the products are good? The drugs of all companies, large and small, have to meet the standards of the United States Pharmacopoeia—the U.S.P.

In the case of antibiotics under section 262 of title 42 of the United States Code, which concerns the regulation of biological products, the Public Health Service must make a full inspection of the facilities of pharmaceutical manufacturers before the manufacturers can make and sell antibiotics.

Physicians naturally want their patients to get drugs which are safe and effective. Perhaps this statutory requirement, if extended to other drugs, might go a long way toward relieving their apprehensions concerning the quality of the products of smaller companies.

Mr. GORE. Did the Senator's committee ascertain the existence of a program by the American Medical Association to inform individual doctors as to the exact chemical comparison of the highly advertised trade names, on the one hand, and the more reasonably priced products of smaller concerns, on the other?

Mr. KEFAUVER. No, I know of no such program on the part of the American Medical Association or anyone else.

Mr. LAUSCHE. Mr. President, at this point will the Senator from Tennessee permit an interruption?

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). Does the Senator from Tennessee yield to the Senator from Ohio?

Mr. KEFAUVER. I yield.

Mr. LAUSCHE. I have received letters from doctors in Ohio who make the same complaint as the one the normal citizen has made about the high prices of drugs.

Mr. KEFAUVER. Yes, we have received letters from many doctors, complaining of the excessive advertising to which they are subjected and of the high prices which their patients have to pay.

Incidentally, the expenditures for drugs plus the expenditures for appliances, such as hearing aids, last year—for the first time in history—exceeded the expenditures for medical services which includes payments to doctors.

At an appropriate time we hope to have representatives of the American Medical Association appear before our subcommittee.

Mr. GORE. Mr. President, will the Senator from Tennessee yield again to me?

Mr. KEFAUVER. I yield.

Mr. GORE. Is it not true that many of the local druggists—like many of the doctors who were referred to by the distinguished senior Senator from Ohio, who spoke of the doctors in Ohio—are very much concerned, when they have on their shelves two similar products, but one costs five or six times as much as the other, or two identical products, but one costs five or six times as much as the other, when a customer presents a prescription which calls for the higher priced product, by name? Then the druggist has little choice other than to sell the highly advertised, higher priced product; is not that true?

Mr. KEFAUVER. That is entirely correct. The druggist would be in violation of State law if he were to substitute the product of any other company, even though it met the U.S.P. standards.

Mr. GORE. Is this not a problem in connection with which the doctors, the druggists, the drug manufacturing industry, and the Government should cooperate, to the end of making available to the patients, those who are sick, drugs at reasonable prices?

Mr. KEFAUVER. Certainly it is a problem which should receive the very best thought and cooperation of the medical profession and also of the pharmaceutical manufacturers.

But the problem is most far reaching, transcending perhaps what can be accomplished by voluntary efforts. As the life expectancy increases, so also does the number of elderly people who have to have so many of these drugs in order to live. Yet to a large proportion of these elderly people, many of whom live on small, fixed incomes, the price of drugs constitutes something of an economic crisis. For example, we heard testimony from representatives of the Retired Teachers Association and representatives of the Retired Government Employees Association also appeared before our committee. The facts they have presented are really alarming. The situation necessitates some solution.

Mr. GORE. I hope the Senator's committee made some progress toward the end he seeks in securing cooperation from the various groups involved in health services.

Mr. KEFAUVER. We have been receiving very good cooperation from some and not so good from others.

Mr. President, I wish to thank my colleague, the Senator from Tennessee—who, I know, has a very deep concern about this problem—for his interest and for his contribution to the presentation today. I hope he will ask other questions as we proceed.

Earlier I said that prescribing by trade names tends to result in higher prices. This is not the case, however, where the pharmaceutical manufacturer has a patent, and the drug is not generally licensed—such as Miltown and Thorazine and Compazine. In these cases prescribing by generic name would not result in a lower price.

PRICES IN FOREIGN COUNTRIES

Mr. President, at this time I wish to point out that prices to druggists for steroid hormones were frequently found to be considerably lower in foreign countries than in the United States. An example is Merck's prices for prednisone, which it sells in the United States as Deltra, in bottles of 100 5-mgm. tablets. In the United States, Merck's price to druggists is $17.90, whereas in Great Britain its price to druggists is $7.53. These prices are reflected in table I, which will be included in the RECORD at the end of my remarks.

Mr. LAUSCHE. Mr. President, will the Senator from Tennessee yield for a question?

Mr. KEFAUVER. I am very happy to yield.

Mr. LAUSCHE. Did Merck have a subsidiary in England, or did Merck have a separate company there?

Mr. KEFAUVER. Merck now has a manufacturing plant in England. But as of the time their price comparisons were made, the prednisone Merck sold in England was either produced in the United States or in Canada, where production costs are about as high as those in the United States. But even though Merck's drugs were then sent from Canada or from the United States to England—and I suppose those shipments involved the payment of some duty, as well as some transportation expense—Merck still sold Deltra, under those circumstances, in bottles of 100 5-mgm. tablets, for $7.53, as compared to $17.90 in the United States. Incidentally, the British have no price-control law.

Mr. LAUSCHE. Then, the fact is that the druggist in the United States had to pay for these Merck drugs $17.90, and in Great Britain the druggist paid $7.53, so the druggist in the United States had to pay approximately 150 percent more. Is that correct?

Mr. KEFAUVER. That is correct.

Mr. LAUSCHE. I thank the Senator very much.

Mr. KEFAUVER. Generally speaking, the United States, with the exception of Canada, is the highest priced drug country. In most cases the prices in Canada are a little higher than those in the United States, but next to Canada, the prices in the United States are usually highest.

Let us turn now to the question of manufacturing costs.

MANUFACTURING COSTS

In order to avoid the problem which would have arisen had the subcommittee requested the drug manufacturers to submit their production costs for individual products, the subcommittee subpenaed their bulk purchases and sales contracts.

Let me say, in that connection, companies usually object strenuously to supplying breakdowns of their manufacturing costs by their various products. In my opinion congressional committees are entitled to get such information by subpena. I think the courts would uphold the power of committees to do so.

But the drug companies, of course, do not want their competitors or the Congress to know what their costs are. We have tried to respect their wishes and have not requested them to supply detailed product cost breakdowns. Again I wish to emphasize my belief that we could get that information if the matter were brought to a contest. To avoid the issue, however, we asked the companies to give us their bulk sales prices. These are the prices at which they buy and sell drugs from each other in bulk form. Among others, such information was obtained for the generic product, prednisolone. It is to be assumed that on such bulk sales a profit is made. I wish to emphasize that the bulk price was not for a raw material which then went into the production of prednisolone. It was not like flour, from which with yeast, sugar, and other ingredients bread is baked. It was for the finished product itself, ready to be tested, tableted, bottled, and sold. It was akin to bread, not flour. Unfortunately, in many articles about the hearings this key point was missed.

The subcommittee obtained from several independent companies quotations for costs of tableting and bottling, which also included a profit. The subcommittee used a quotation which was between the lowest and the highest cost submitted by companies that would tablet, bottle, and test this finished material for anybody.

Schering does not itself make prednisolone. Schering buys prednisolone from Upjohn. Schering obtained it for $2.37 a gram. That was the starting point. Then we added to that the cost of wastage, tableting, and bottling. We arrived at a computed manufacturing cost of $1.57 per 100 tablets, or 1.6 cents per tablet.

The fact that this figure merely reflects production costs, and does not include distribution and selling costs, was made clear at the time. We wanted the companies themselves to furnish the reasons for the difference between the production cost of $1.57 and their price to the druggist of $17.90. It was also pointed out that the figure did not include that part of research, expenditure, and profits not included in the bulk sales price. Officials of Schering and Upjohn were then asked to explain the difference between the production cost of $1.57 per hundred tablets and the charge of $17.90 per hundred tablets to druggists.

Mr. McNAMARA. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield very happily to my distinguished friend from Michigan.

Mr. McNAMARA. I should like the senior Senator from Tennessee to know that I have followed the hearings of the Antitrust and Monopoly Subcommittee, of which he is chairman, with a great deal of interest. I commend him highly for contributing so much to the welfare of the aged of this Nation, because, as the Senator knows, they are very much concerned with this problem.

Mr. KEFAUVER. I know that if any Member of the Senate has studied the problems of the aged and is concerned about them, it is the Senator from Michigan, because he is chairman of the subcommittee which has been holding hearings on the problems of the aged, which includes, among others, the cost of medical care and the cost of securing drugs.

Mr. McNAMARA. Does the Senator know that the group affected most intensely by the high cost of drugs are the 16 million men and women over 65, and that in just 10 years there will be 20 million of them? This is a tremendous problem for them. I am sure the Senator has given them some consideration, not only in the hearings, but also in the report.

Recent information developed by the Subcommittee on Problems of the Aged and Aging reveals that while all age groups spend $19 per person per year for drugs and medications, those 65 and over spend $42 per person, or about 2½ times as much.

I suppose that information has been called to the attention of the committee.

Mr. KEFAUVER. Yes. That information was given to the committee by a distinguished member of the subcommittee of which the Senator from Michigan is chairman. I refer to the Senator from West Virginia [Mr. RANDOLPH].

Mr. McNAMARA. Figures for 1958 indicate that one-fourth of the total cost of medical care for our aged citizens was accounted for by the cost of drugs and medicines. In other words, drugs and medicines account for 25 percent of their total medical costs.

Does the Senator know that three out of five people over 65—and this means 9.6 million people in this country—have a money income of less than $1,000 per year?

Mr. KEFAUVER. What is the figure?

Mr. McNAMARA. Does the Senator realize that three out of every five people over the age of 65 in this country have a money income of less than $1,000 per year?

Mr. KEFAUVER. I have heard that. I think that emphasizes the reason why the older people have a very hard time obtaining the high-priced drugs which they need so badly.

Mr. McNAMARA. That is correct. In our hearings over and over these people referred to the work of the Senator's committee and to the concern they have over the high cost of drugs. As people get older they need more sedatives and more drugs to fight arthritis and the other crippling diseases which are more prevalent among the older people.

Eighty percent of these Americans have contributed a lifetime of productive activity to the amazing growth of this Nation. Now, in their later years, most of them have less than $2,000 a year income. I am sure the Senator from Tennessee recognizes this is a real problem.

Mr. KEFAUVER. It certainly is a very real problem.

Mr. McNAMARA. Many of the aged people have been told to live off their savings, when their incomes are too low to sustain them. Does the Senator know that 45 percent of these people had less than $500 in liquid assets in 1958, according to governmental records, and 30 percent had no liquid assets at all? When it is said that those people should live off their savings and should pay high prices for drugs, that is simply no answer at all.

Mr. KEFAUVER. I certainly agree with the Senator. I commend the Senator for the work he is doing as chairman of the subcommittee.

Mr. LAUSCHE. Mr. President, will the Senator yield to me so that I might ask a question of the Senator from Michigan?

Mr. KEFAUVER. I yield for that purpose.

Mr. LAUSCHE. What did the hearings disclose about the ability of the aged people to pay these prices, and about whether they felt they were having to pay inordinate prices for the drugs they needed?

Mr. McNAMARA. We had much testimony which indicated the older people were making all sorts of efforts, by forming cooperative groups, to try to get lower or wholesale prices on the drugs. These people are doing all sorts of things to try to counteract the high cost of drugs and medicines needed for the aged people. They have been successful, in some instances, in setting up some sort of group cooperative.

However, some drug companies, retailers and others try to cut off the supplies from the wholesalers, when there are these successful ventures in buying drugs wholesale for these aged people. The Golden Age Clubs go into this sort of thing. All over the country there is great interest.

Mr. LAUSCHE. What is the technique of the operation, where the attempt is made to cut off buying on a cooperative basis?

Mr. McNAMARA. The attempt is made to cut off the source of supply. In one instance that I was told about the manufacturer was told by the retail distributor, "If you are going to sell direct to the consumers we are not going to buy from you." That was the technique used.

Mr. LAUSCHE. The net result was that the aged people had to buy in the open market?

Mr. McNAMARA. That is correct. They had to pay the high prices which the Senator from Tennessee has been pointing out.

Again, I thank the Senator from Tennessee for the fine work he has been doing, and I assure him that the people in these so-called senior citizen groups appreciate the efforts he has been making in their behalf.

Mr. KEFAUVER. Mr. President, the Senator has stated one of the big reasons why this situation has become more and more acute. These older people have little income and almost no savings, yet they need more and more drugs as they get along in years.

I thank the Senator for his contribution, and I commend him for his work on the committee.

Mr. McNAMARA. I thank the Senator from Tennessee.

Mr. KEFAUVER. Mr. President, the explanation of the manufacturers for the sizable markup over production costs was essentially that large sums had to be

paid for research, that their selling expenses were high, and that their profits were not unreasonable.

PROFITS

Let us turn then to the question of profits. There was introduced in the record a comparison of rates of return on net worth, after taxes, after everything, of selected industries for the year 1957, which was a normal year. 1958 was a depression year for certain industries, while 1957 was a typical year. The drug industry was shown to have a rate of return of 21.4 percent, which is the highest of any manufacturing industry and approximately double that of the average of all manufacturing, which is 11 percent.

I hope the chart, which is at the back of the Chamber, can be put up to a higher level, so that Senators can see it better.

Mr. President, it can be noted that the average rate of return for all manufacturing was about 11 percent, but in the year selected the rate of return of the drug industry, according to the report, which was figured by the Federal Trade Commission, was 21.4 percent, after taxes.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield to my good friend from Pennsylvania.

Mr. CLARK. I have followed with interest the exposition the Senator has been making. The Senator was kind enough to give me an advance copy of his speech.

Mr. KEFAUVER. We are trying to get copies for all Senators.

Mr. CLARK. I read the speech with great interest.

I should indicate my great sympathy with the fine work the Senator is performing. The profits of these drug companies seem very large indeed. I should disqualify myself on account of interest, since I own 150 shares of stock of Smith Kline & French.

Mr. KEFAUVER. I congratulate the Senator. He has done very well.

Mr. CLARK. I am happy indeed with both the capital enhancement and the return I have received. I do think the profits are very high.

I wonder whether the Senator has any specific remedy to suggest as to how we can make the drugs cheaper for those who need them so badly, even if I do not receive quite so much in dividends, within our free-enterprise system? How can we achieve the desired result without the imposition of Federal controls, which we may be reluctant to impose?

Mr. KEFAUVER. I was going to come a little bit later to the legislative recommendations, but since the Senator has brought up the subject I think I can point out certain recommendations now.

I do not think that any of us have a whole lot of sympathy for anyone who complains about profits of a person who makes an item which is purely a luxury and not a necessity of life or health.

Mr. CLARK. Such as lipstick?

Mr. KEFAUVER. I am not sure about lipstick. That might be something else.

The drug industry is different. The drug industry is an industry serving consumers who are sick people. Many of them, as the Senator from Michigan pointed out, are people with small incomes. The consumers of the ethical drug industry are captives. They have no opportunity to shop around whatsoever.

Mr. CLARK. Mr. President, will the Senator yield further?

Mr. KEFAUVER. I will yield further in just a moment.

I can think of no other place where there should be more awareness of their responsibility to the community than in the drug industry. In the interest of the public health, the pharmaceutical manufacturers must see to it that drugs are sold at prices that bring them within the ordinary standard of life. To this end there must be price competition in the drug industry. That is what I am talking about.

There are certain things which I think specifically should be done. I shall go into some detail on this matter.

The drug companies should, in their elaborate advertising program, make the generic name as prominent as the trade name, so that doctors may see it.

In order to relieve any doubt about the efficacy and safety of drugs produced by smaller firms, the Food and Drug Act must be strengthened so as to provide examination of the facilities and products of all pharmaceutical manufacturers—big and small.

Generally speaking, I am in favor of the exclusive patent grant for the purpose of encouraging incentive on the part of innovators. However, in the drug industry we have a peculiar situation in which the health of the Nation is involved. A patient receives a prescription for a particular drug; he cannot shop around for alternatives. If the company has a patent or is an exclusive licensee, there are no other producers and there is no check upon the price which the company may charge.

I believe that in the public interest, in order to have some competition and get prices down, we should consider a licensing provision, allowing qualified applicants to enter into production and sale upon payment of a reasonable royalty. That was the Government's patent policy when the Alien Property Custodian sold Schering. I have not thought the problem through in all its aspects, but that is one possibility.

Mr. CLARK. Mr. President, will the Senator further yield?

Mr. KEFAUVER. I am very happy to yield.

Mr. CLARK. Has it occurred to the Senator to explore the avenue that perhaps the drug industry, because of the factors which the Senator has just summarized, is affected with a public interest, and perhaps not too far removed, in philosophy, at least, from public utilities, which are given a monopoly of sorts, and have long been subject to public regulation.

Mr. KEFAUVER. The position the Senator has taken is recognized by some foreign countries, which do not grant product patents on drugs. Germany, for example, which has produced perhaps more new drugs than any other country, grants no product patents because it recognizes the importance of this industry to the public health.

I will say to my friend from Pennsylvania that the drug industry is charged with a public interest. Several witnesses before our committee have recommended that drugs be put into the category of public utilities and subjected to regulation in the public interest.

I am not willing to go along with the suggestion. I want to try other means, along the lines of some legislative recommendations which will be made. I believe those other means would do a great deal toward correcting the situation. I hope that the American economy does not have to go to the extent of outright price regulation, but many people are demanding it now.

Mr. CLARK. Mr. President, will the Senator yield for a final question?

Mr. KEFAUVER. I am happy to yield.

Mr. CLARK. Does not the Senator feel that the emphasis should be on the high price of drugs, and the large profits made by the drug manufacturers? I understand that there is a necessary correlation between the two, but does the Senator feel that the amount of profit made is relatively unimportant as compared with the high price of the product, which places it outside the capability of so many people who need the drug to buy it?

Mr. KEFAUVER. Yes. I am in favor of the companies making a good profit, but I do not know how we can get away from the excessive profit they are making, and the excessive prices they are charging for their drugs. I shall show some examples of profits, salaries, stock options, and so forth.

In connection with the matter of Government control of the prices of drugs, a recent poll which I saw in the Evening Star showed that between 65 and 70 percent of the people polled felt that there should be some Federal regulation. I hope we can find some other way.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. LAUSCHE. Am I correct in my understanding that after it was disclosed at the hearing that Schering and Upjohn were getting $17.90 for 100 tablets which cost them $1.57, they answered, "While that may be true, and while the disparity between the selling price and the production price is great, our ultimate profits are still only reasonable"?

Mr. KEFAUVER. Schering objected on the grounds that other costs, such as advertising expenditures, were not included. But this of course was recognized in the table itself. I shall point out later that in the case of Mr. Hoyt, of Carter Products, by using the same process used for Schering, the calculation was shown to be exactly what he stated his production cost was, down to the fraction of a penny. Of course, most of them argued that their profits were not unreasonable.

Mr. LAUSCHE. After the argument was made that the actual cost of producing added to the cost of advertising and distribution left them only with a reasonable profit, the subcommittee of the Senator from Tennessee then looked

into the profits that were made according to the recorded statistics.

Mr. KEFAUVER. That is correct.

Mr. LAUSCHE. And when those statistics were examined, it was found that the drug industry led the entire manufacturing industry in profits made.

Mr. KEFAUVER. It led all manufacturing industries in the profits made on net worth. I believe in 1 year cement may have shown a little larger profit on sales than did the drug industry. But for the past several years, in terms of both sales and investment, the drug industry has been leading the Nation. In the case of Schering, Upjohn, and Merck, I have their exact profits after taxes. They are in the neighborhood of 20 percent on investment after taxes.

Mr. LAUSCHE. That is, according to the chart, the drug manufacturers are earning a profit of about 21.4 percent.

Mr. KEFAUVER. On net worth after taxes.

Mr. LAUSCHE. And all manufacturing shows an average profit of 11 percent, on the basis of the same formula.

Mr. KEFAUVER. That is correct.

Mr. LAUSCHE. I may say to the Senator from Tennessee that in one of the hearings conducted by the Surface Transportation Subcommittee of the Committee on Interstate and Foreign Commerce we likewise had a chart, which showed that the drug manufacturers were enjoying the highest profits, and that the lowest profit was around 2 or 3 percent. The average indicated there was 11 percent.

Mr. KEFAUVER. I thank the Senator for that information. It is my understanding that the Federal Power Commission and the various State regulatory agencies feel that a reasonable profit on worth, for the purpose of making rates, is about 6 percent. This is a great deal less than the drug industry has been making.

Mr. LAUSCHE. I ask the Senator whether, after these figures were disclosed, any explanation or justification was given for the high profit of 21.4 percent?

Mr. KEFAUVER. Yes. The witnesses said that the costs of research and the need for growth were factors; that the drug industry was a growth industry, which had to make high profits. They had a great deal to say about research, and I will come to that later. I am in favor of research. However, research expenditures by 20 of the largest drug companies is 6.4 percent of sales. Even the drug manufacturing officials admitted this factor could not account for their high prices.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I am delighted to yield to the Senator.

Mr. LAUSCHE. I have before me the table about which I spoke a moment ago. It covers the corporate profits made in 1956. It was issued by the National City Bank of New York. It likewise shows that drugs and medicines were first, and in 1956 had a profit of 22.4 percent. That means that it was 1 percent higher in 1956 than it was in 1957. The lowest in profits made were the fire and casualty insurance companies, of 2.2 percent. Seventy-three different manufacturing enterprises are shown, and drugs and medicines are at the top of the 73.

Mr. KEFAUVER. That is very interesting. I thank the Senator from Ohio. The available evidence indicates that in terms of profits as a percent of sales, the drug industry is outranked among manufacturing industries only by cement, which has a considerably lower profit rate in terms of investment. From statistics of the Federal Trade Commission it was revealed that in 1958 Schering's profits, after taxes, were 23.2 as a percent of net worth; Merck 17.9 percent and Upjohn 18.9 percent.

Also, Schering Corp.'s cumulative profits after taxes in the 5½ years between 1952 and the first 6 months of 1957 were greater than the total price at which the corporation had been purchased from the Alien Property Custodian in 1952.

That is shown by chart No. 4 in the rear of the Chamber. In other words, in 5½ years, their cumulative profits were enough to recover the price paid the Government for the property. That is not anything like the case of Carter and of Smith, Kline & French, which in much less time earned enough to more than pay for the value of the company. In one case, in about 2 years they made enough to pay for the net worth of the company, if profits are calculated on the cumulative basis.

PATENTS

It was developed during the hearings that no company has as yet obtained a patent on the product, prednisone. However, between 1955 and 1958 cross-licensing agreements were entered into among Schering, Merck, Upjohn, Pfizer, Parke Davis, and Ciba. Because of the conflicting claims of priority for the discovery of prednisone, the Patent Office, following its usual custom, has placed such claims in what it characterizes as an interference proceeding. As of this day, this proceeding has not been decided. The license agreements entered into between Schering and these other companies provided, strangely enough, that the companies would pay Schering royalties for 3 years on the sales of prednisone even though no patent had issued. But of even greater importance, the license agreements provided that the parties would only sell prednisone in finished form, that is, in tablet form ready for use. The purport of this restriction is clear. By prohibiting bulk sales, small companies could not buy in bulk, do their own tableting and bottling, and market the product.

There was a small producer of prednisone, the Syntex Corp. in Mexico, which had filed a patent application for the product, but at the time was not a party to the license agreements. In 1957 Syntex started making bulk sales of prednisone to small drug manufacturers in the United States. The restrictive license agreements then broke down because when Syntex started making bulk sales, Pfizer and Merck felt compelled to follow suit. By virtue of these bulk sales, small companies today are able to manufacture and offer for sale prednisone at the low prices which I have mentioned. However, if the interference proceedings were to be settled tomorrow and a patent were to be issued to any one of the parties other than Syntex, the effect of the license agreements would be to cut off the bulk sources of supply to the small manufacturers. This would even apply to Syntex which now has an agreement with Schering under which it is to make no bulk sales if Schering gets the patent, and the same restriction would probably be imposed upon it if any of the other applicants were to get the patent.

I can only anticipate that if Schering, having its cross-licensing agreements with the big companies, gets a patent on prednisone, these little companies, which are selling to the druggists at lower prices, as well as to the Government, are not going to be able to sell at all. There will be no price competition to the Government or to anyone else, if that should happen.

SELLING EXPENSES AND ADVERTISING CLAIMS

Because of the importance of sales promotion both as a cost factor and as a means of obtaining a share of the market, selling costs and advertising claims were inquired into during the steroid hormone hearings. In 1958 Merck put dexamethasone on the market under the trade name, Decadron. Even its own medical director acknowledged before the subcommittee that some of the claims made by Merck for the product were overstated, and that some of the side effects were understated. This relates to the advertising that goes to the doctors, which has great influence upon them in prescribing for their patients.

Merck furnished the subcommittee with samples of some 60 to 70 direct mailings to physicians for this one product, Decadron, which it had sent out in just 1 year. With 150,000 practicing physicians in the country, this represents a total of around 10 million pieces of mail for 1 company for 1 product in 1 year. Upjohn has over 1,000 detail men out of a total employment of around 5,000. According to a survey of the 20 largest drug companies conducted by the subcommittee, selling expenses average 24 percent of the sales dollar. With an annual sales volume of over $2 billion, this means that around half a billion dollars is spent every year in vying for the doctor's attention. This is an annual selling expenditure of over $3,000 per doctor. Is it any wonder that many physicians have written to the subcommittee complaining that they are literally being inundated with advertising and promotional material, much of which, they say, is immediately thrown into the wastebasket without being read.

Now I turn to the second drug hearings which were held; namely, the hearings on tranquilizers. These were very important hearings.

The chart in the rear of the Chamber contains a breakdown of sales dollars of 20 major companies, showing how one dollar is broken down.

It will be seen that the cost of the goods ranges from 19.2 cents to 32.3 cents. The figure on the left is the average. Research is 6.4 cents. General

and administrative expense is 11.2 cents. Selling comprises 24 cents of the sales dollar. Taxes take 13 cents. The profit after taxes is 13.1 cents.

Some companies spend a little more on research. Some do not spend as much, such as American Home Products Corp., which spends a little more than 2 cents out of each dollar on research. But on the average the selling cost is approximately 4 times the amount spent for research. Those figures will be seen on the chart.

THE NATURE AND IMPORTANCE OF TRANQUILIZERS

On January 21, 1960, the subcommittee began its second product hearings dealing with tranquilizers. Tranquilizers are of very recent origin, having been first introduced commercially in this country in the early 1950's. Sales are estimated to be in the neighborhood of $175 to $200 million a year. There are three main classes of tranquilizers. First, there are the phenothiazine derivatives, principal among which are thorazine and compazine, which are sold in this country by Smith Kline & French. Second, there are the alkaloids of rauwolfia serpentina including principally reserpine sold in this country by Ciba Pharmaceutical Products under the trade name Serpasil.

I interpolate to say that rauwolfia has had a long and interesting career. The crude root was used 1,000 years ago because it was found to have tranquilizing effects. The Indians went far in isolating the important alkaloids in the crude material.

Then, in recent years, Ciba made some further refinement in the product and secured patents in many countries of the world on reserpine. It sells this product under the trade name of Serpasil. Ciba has an American subsidiary.

The third class of tranquilizers is a miscellaneous group, the principal among which is meprobamate, sold in the United States under the trade name of Miltown by Carter Products, and of Equanil by Wyeth, a subsidiary of American Home Products Corp.

All these drugs are sold under prescription. They are used not only in mental hospitals but also in the treatment of patients living ordinary lives but suffering from anxiety and tension, neurotic symptoms, emotional upsets, and the like. The phenothiazine derivatives and the derivatives of rauwolfia serpentina are frequently referred to as "potent" tranquilizers in that a large portion of their total use is for the treatment of hospitalized and other seriously ill mental patients. Meprobamate has been referred to as a "mild" tranquilizer in that its principal use is in the treatment of nonhospitalized patients for the relief of anxiety and nervous tension.

The potent tranquilizers have been of great value to mental institutions in the treatment of hospitalized patients. Not only have the problems of treatment within the hospitals been eased, but it has been possible to release a substantial number of patients who would still be hospitalized had it not been for the development of these new drugs. To prevent a recurrence of their ailment, however, it is frequently essential that these released patients continue treatment with the tranquilizing drugs. To such patients, their families, and indeed to society as a whole, the price which they have to pay for these drugs becomes a matter of gravest importance.

As a matter of fact, we received testimony that after a number of patients had been released from mental institutions or hospitals and were told to continue taking tranquilizers, it was necessary for them to return to the hospitals to get them, because the patients could not afford to buy tranquilizers themselves. Similarly, to taxpayers generally the price which must be paid for tranquilizers by tax-supported mental hospitals is a matter of no small moment.

The leading producers of tranquilizers are Smith Kline & French, Carter Products, Inc., American Home Products Corp., through its Wyeth division, and Ciba Pharmaceutical Products of the United States, Inc. Representatives of these companies were invited to appear and were heard during the course of the tranquilizer hearings.

THE PRINCIPAL TRANQUILIZERS

Foremost among the potent tranquilizers is the product Thorazine, which is manufactured and sold by Smith Kline & French Co. under an exclusive license arrangement with the French company Rhone-Poulenc, which developed the product and holds the U.S. patent.

Quite a number of these products were developed in France and in other countries, and they are sold in the United States under various types of licensing agreements.

The discovery of the tranquilizing property of this product was made by Dr. Fritz Lehmann, of Canada, working with material supplied by Rhone-Poulenc. Dr. Lehmann testified before our committee. He is a very eminent psychiatrist.

Introduced into the United States in 1954, Thorazine is the principal tranquilizer used in mental institutions. Smith Kline & French also markets and sells a related tranquilizer, Compazine, under an identical arrangement. Also originated by Rhone-Poulenc, of France, this drug was introduced in the United States in 1956.

In 1955 the Carter Products Co. brought onto the American market meprobamate, which it markets and sells as Miltown. Carter Products licensed one other American manufacturer to sell meprobamate in the United States, the American Home Products Co., which sells the product through its Wyeth division as Equanil.

There is a very unusual situation with reference to the Carter Products Co. and its sales of meprobamate. The only competition this company has in the United States is with Wyeth, its licensee, which sells the product as Equanil. Both companies sell their products at identical prices. Their bids to the Government have been identical on all occasions except one. The companies make a very small reduction to the Government in comparison with other companies, because they have an exclusive monopoly.

I do not know whether this table can be placed in the RECORD, but Wyeth and Carter, regardless of the amount of the purchases, have always ended, with the one exception, at the same price to the Military Medical Supply Agency. The price might vary a little—a few cents up or a few cents down—for 500 tablets. The tablets are sold to MMSA in bottles of 500. Yet the prices of both companies are identical.

It does not make any difference how large the bid is. One was for $882,000. Another was for $121,000. In both cases the prices were identical—$20.25 for 500. In early 1958 there were contracts on which each bid $22.50. How each company could know exactly how many cents they were going up and how many cents they were going down is quite difficult to understand. As a matter of fact, in the middle of our hearings the Government brought an indictment against them, under the antitrust laws.

Mr. ELLENDER. Mr. President, will the Senator from Tennessee yield?

Mr. KEFAUVER. I am very happy to yield.

Mr. ELLENDER. Is that product made abroad?

Mr. KEFAUVER. The only seller abroad, under the name Miltown, is American Cyanamid.

Mr. ELLENDER. The Senator from Tennessee referred to a product which is sold in two separate places at the identical price. Where is the base of that product obtained?

Mr. KEFAUVER. Here in the United States.

Mr. ELLENDER. And only two companies manufacture it?

Mr. KEFAUVER. Only two companies sell it in the United States.

As a matter of fact, Carter, which has the basic patent, does not manufacture the product at all. Carter has contracts with five or six small chemical companies which manufacture the finished bulk product for Carter, and then Carter sells the bulk product to its licensees. Carter sells the powder to Wyeth for its sales of Equanil in the United States; it has also sold to American Cyanamid, which is the foreign sales representative of Carter on sales of Miltown abroad.

Mr. ELLENDER. Is it not true that the company which furnishes the product requires that it be sold everywhere at the same price?

Mr. KEFAUVER. Such a requirement would be in violation of the antitrust law; that is clear. A company cannot use its patent to force the licensees to sell the product at the same price.

Mr. ELLENDER. So when the Senator says this is a monopoly, I suppose he is on good ground, is he not?

Mr. KEFAUVER. Yes; it is a complete monopoly. Carter has a complete monopoly, by patent protection. Carter licenses one company—American Home Products—for domestic sales in the United States and abroad, and Carter licenses another company—American Cyanamid—for sales of Miltown outside the United States.

I wish to point out an interesting thing: Many people have been asking why the foreign prices are so much lower

than the American prices. This situation is a very interesting one in that respect. Carter Products, Inc., sells in bulk to Wyeth, which is part of American Home Products, here in the United States. In 1958 it sold $10 a pound.

Mr. ELLENDER. That is the price in the United States?

Mr. KEFAUVER. Yes, plus a royalty; and of course Wyeth sells under the name Equanil. But Carter's foreign sales are handled by American Cyanamid; and Carter sold the same product in 1958 to American Cyanamid for under $5 a pound—less than half the price paid by Wyeth.

Mr. ELLENDER. Is American Cyanamid a U.S. company?

Mr. KEFAUVER. Yes; and it has subsidiaries abroad.

Mr. ELLENDER. But it does not sell in this country?

Mr. KEFAUVER. No; Carter has not licensed it to sell in the United States. My point is that in the case of this product, so far as the bulk material is concerned, American Cyanamid gets the basic product at a much lower price for sales abroad than Wyeth does for sales in the United States.

Mr. ELLENDER. Are those products manufactured in this country or abroad?

Mr. KEFAUVER. All of them are manufactured in this country.

Mr. ELLENDER. How does the Senator account for the difference in price?

Mr. KEFAUVER. Does the Senator mean the difference between the price to Wyeth and the price to American Cyanamid?

Mr. ELLENDER. Yes.

Mr. KEFAUVER. The difference is due to a policy decision by Carter.

Mr. ELLENDER. A moment ago, when I was asking questions, I was particularly interested in the product which is manufactured abroad. Did the Senator find that various companies handle that product in the United States; or does only one company handle it in the United States? I refer to meprobamate.

Mr. KEFAUVER. Carter sells under the name of Miltown and it has licensed one company, American Home, to sell in the United States. American Home sells under the trade name Equanil.

Mr. ELLENDER. It is the same product?

Mr. KEFAUVER. Yes; they are identical.

Mr. ELLENDER. The product to which the Senator from Tennessee has referred is sold abroad; and in the United States it is sold by these two companies, is it? Does the Senator know whether the contracts are similar? In other words, do they pay the same price?

Mr. KEFAUVER. In foreign countries?

Mr. ELLENDER. No; I refer to the product which is sold in the United States, but is manufactured abroad.

Mr. KEFAUVER. None that is manufactured abroad is sold in the United States.

Mr. ELLENDER. A moment ago the Senator from Tennessee said a certain product which is manufactured abroad is handled by two companies in this country, and that, for some reason or other, the price charged for the product to both companies is the same.

Mr. KEFAUVER. We were talking about Smith Kline & French, which has Compazine and Thorazine, and which has a license from Rhone-Poulenc, of France.

Mr. ELLENDER. Are the prices to the two companies the same?

Mr. KEFAUVER. Only one company has an exclusive license.

Mr. ELLENDER. I thought there were two.

Mr. KEFAUVER. Two on meprobamate. Smith Kline & French is exclusively licensed for Thorazine and Compazine. Those are two products, not two companies.

On meprobamate I think the point which it is important to make is that Carter sells to an American company which is going to sell abroad at half the price that Carter sells to the American company—Wyeth—which will sell here in the United States.

Mr. ELLENDER. Of course, the Senator from Tennessee realizes that that situation is not confined to drugs—when a product made in the United States is sold cheaper abroad. For instance, the Singer sewing machine sells in the United States for $125 or $130, but abroad it can be purchased for $50; and the same is true of automobiles and various other commodities produced in the United States.

Mr. KEFAUVER. I was not aware of the situation in the case of Singer sewing machines.

Mr. ELLENDER. That may not be true today, but it used to be. I know there is a difference. American products can be bought abroad much cheaper than the prices at which they can be purchased in the United States; and that situation is not confined to drugs.

Mr. KEFAUVER. I understand that is true. Of course, in the case of sewing machines, competition may have something to do with the price, and may hold down the price.

But only in limited areas is there any price competition in the drug business. And even though the sales price in other countries may be much lower—as I shall show in the case of a great many of these products—than the price in the United States, I do not see why sick people in the United States cannot get something in the nature of a "break," in terms of the prices they have to pay, as compared to the prices charged in other countries.

Even when the drugs are made here in the United States, they frequently are sold at prices very much lower in other countries. I think the whole thing is topsy-turvy, and not fair or right.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. HOLLAND. I understand Carter sells to the one company which is licensed to sell to the American public at twice as much as to the one company it licenses to sell to the rest of the world.

Mr. KEFAUVER. That is correct.

Mr. HOLLAND. How does it justify or explain such a price difference since it holds a monopoly in this field?

Mr. KEFAUVER. That is the price Carter fixes. There is no price competition in the United States. Carter has a patent monopoly.

Mr. HOLLAND. Is there no antimonopoly law that would reach to that kind of operation?

Mr. KEFAUVER. As I have said, the two companies, Carter and Wyeth, have now been indicted for a violation of the Sherman Act. This difference in price may have been a factor leading to the indictment. But it is not a violation of the Robinson-Patman Act since the customers of Wyeth are not the customers of American Cyanamid.

Mr. ELLENDER. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. ELLENDER. If the company has an exclusive patent, it could not be reached through the antitrust laws.

Mr. KEFAUVER. That is correct. In the field of drugs which are absolutely necessary to life, the testimony shows that where companies are thoughtful enough to issue several licenses and get royalties, the little companies can get into the business and compete, and that practice results in saving the Government a tremendous amount of money. Prednisone, which was sold to druggists at $170 per thousand, was sold to the Government, on bid, at $20. The same company that sold it at $170 offered it, on bid, for $23 to the Government. If little companies cannot get into the business, price competition is absent, and the price to the Government remains high. I think, with respect to drugs that are a necessity of life, we ought to seriously consider whether it would be good public policy that companies be required to license a qualified applicant upon payment of a reasonable royalty.

Mr. ELLENDER. We might also look into the applicability of patent laws. That would be a way to reach them.

Mr. KEFAUVER. That is right.

Mr. ELLENDER. Particularly where the companies sell the same product at different prices to Americans than they do abroad. It strikes me we might be able to reach them in that manner.

Mr. KEFAUVER. I thank the Senator for his observations and suggestions. We certainly expect to go into them.

In 1954 Ciba, Ltd., of Basle, Switzerland, obtained patents in many countries, including the United States, covering reserpine, which it markets under the trade name Serpasil.

As I pointed out a little while ago, reserpine is a refinement of rauwolfia, which was used 1,000 years ago in India. It is the bark off a root.

When Ciba introduced this product on the American market, it freely granted licenses to manufacture and made no restrictions on sales in bulk. Reserpine is thus the only important tranquilizer available to, and sold in the United States, by small manufacturers. In other words, in the case of the other major tranquilizers, there is a patent monopoly. But Ciba, perhaps not being so sure about its patent, since it involves a product which had been used 1,000 years ago, has permitted small manufacturers to sell it.

PRICES IN FOREIGN COUNTRIES

Although Thorazine is sold to the American druggists in bottles of 50 tablets of 25-mgm. size for $3.03, the same product is sold in Paris, France, for 51 cents; in Rome, Italy, for $1.22; and in Sydney, Australia, for 94 cents.

Meprobamate, sold in the United States by both Carter and American Home Products to the druggists at $3.25 for 50 tablets of 400 mgm. size, was sold in Germany by American Cyanamid under a license arrangement with Carter for 69 cents, in Argentina for 74½ cents, and in Italy for $1.77.

Reserpine, sold by Ciba as Serpasil to druggists for $4.50 in bottles of 100 tablets of 0.25-mgm. size, is sold in Paris, France, for 83 cents; in Germany for $1.05; in Australia for $1.35; and in Holland for $1.09. A small company, the Panray Corp., sells reserpine to druggists for $2.65 in bottles of 1,000 tablets of 0.25-mgm. size—for which Ciba charges druggists $39.50. The president of the Panray Corp., stated that his product met the very rigid tests imposed upon his company in order to sell to MMSA and was identical with the product sold by Ciba as Serpasil.

Now I shall refer to something I am sure the Senator from Florida [Mr. HOLLAND] will be interested in hearing, and I hope the Senator from Louisiana [Mr. ELLENDER], who is always very careful about appropriations, will read.

BID PRICES TO GOVERNMENT PURCHASING AGENCIES

Since a number of suppliers of reserpine were available, the Military Medical Supply Agency—and the amount of drugs this Military Medical Supply Agency buys is stupendous, as is true of the Veterans' Administration—asked for and sought competitive bids on reserpine under the generic name rather than trade name. Based upon records of MMSA, the price of reserpine consistently tended downward under the impetus of competition from smaller manufacturers. In February 1959, Ciba Pharmaceutical Products, while charging druggists $39.50 for 1,000 tablets of 0.25-mgm. size, sold MMSA the same quantity for 60 cents. Because of competition, the Government was able to acquire for 60 cents the same product, in the same quantity, for which the American druggists had to pay $39.50. It was sold to the Government at only 1½ percent of the price at which it was and is being sold to the druggists.

MANUFACTURING COSTS

A rather unusual situation exists with regard to the production of meprobamate. It is not made by Carter itself. Rather, Carter has the bulk product manufactured for it, under agreement, by six producers. The average cost to Carter for meprobamate in December 1958 amounted to $4.35 per pound. Again using the bulk price as a base and adding to it the costs of tableting and bottling as quoted by an independent firm, the subcommittee staff arrived at a production cost to Carter per 400 mgm. tablet of 0.7 cent. It is to be remembered that on the bulk purchases to Carter a satisfactory profit had been made by the manufacturers of the bulk powder. It is also to be remembered that the independent bottling company's charge for testing, tableting, bottling, and labeling also included a profit. When the production cost of 0.7 cent per tablet was introduced in the record and the president of Carter Products was asked to comment, he produced a table of his own representing Miltown costs and profits per tablet. His manufacturing cost coincided exactly with the figure of 0.7 cent per tablet presented by the subcommittee staff. The incident which I have just recounted adequately confirms the soundness of the method adopted by the subcommittee's staff.

I shall digress at this time. The committee was criticized for reconstructing the production cost of prednisolone. It so happens that Schering, which makes no prednisolone, bought it from Upjohn. As I have stated, we have not asked the drug companies for their cost breakdowns, although I think we would have a right to do so. The staff figured what Schering had paid Upjohn for the finished bulk product in bulk form and secured the medium bid—not the lowest, not the highest—from a company to tablet, bottle, and label the product. As I have said, we came up with a production cost of 1.6 cents per tablet for prednisolone.

We then asked Schering to explain what made up the difference between 1.6 cents and their price to the druggist of 17.9 cents. They, of course, talked about research costs, taxes and other expenses, and advertising costs.

After the hearing we found that some small suppliers were selling prednisolone for less than 2 cents per tablet, which was a little bit more than the production cost figured by our staff.

If Senators will compare the two charts, the same method was followed as to Miltown and Equanil. The total cost to Carter Products, Inc., for producing 1,000 tablets was figured to be $7.32, based on the cost to Carter of $3.84 for the material. We added the estimated wastage, the costs of tableting and bottling. The cost per tablet to Carter was figured by the staff to be seven-tenths of 1 cent. To Wyeth it was figured to be 1.5 cents. It will be remembered that Carter charges considerably more for the materials going to Wyeth than it pays itself, and then Wyeth pays Carter a royalty on its sales.

Mr. Hoyt, the president of Carter, then offered a cost breakdown prepared by the company itself. His figures for manufacturing cost turned out to be exactly the same as the figure computed by the staff—seven-tenths of 1 cent. Carter's price to the wholesalers is 5.1 cents.

PROFITS

Except for reserpine, the American tranquilizer market is characterized by monopoly control effected through patents and license agreements. The highest profit companies in all American industry are found in this field. According to figures of the Federal Trade Commission, Carter Products, Inc., for the year 1958 enjoyed a rate of return after taxes on net worth of approximately 44 percent; Smith Kline & French of approximately 35 percent; and American Home Products Corp., of approximately 35 percent.

It will be seen from the chart Carter Products, Inc., first made full returns beginning in 1957, so that we have only the information for the years 1957, 1958, and 1959. It will be seen that profits on net worth after taxes, and after research, have been in the neighborhood of 45 to 50 percent. The chart also shows the figures for Smith Kline & French, averaging over 40 percent, and American Home Products Corp., averages 35 percent, or a little more, as shown for the last several years.

I should point out that the profits of Carter were included in the calculations in arriving at the 21.4-percent profit for the drug industry, but American Home Products Corp. manufactures a lot of other things in many other fields, and is not primarily a drug-manufacturing concern, so the figure for that company is not included.

According to Fortune magazine's ranking of the 500 major industrial corporations by net profits after taxes as a percent of invested capital, American Home Products ranked first and Smith, Kline & French second. Had Carter Products, Inc., been among the 500 largest firms, for which figures were gotten together by Fortune magazine, it would have outranked them all, with a net profit after taxes on invested capital of 38.2 percent.

For the RECORD, I think it is well to point out there is a slight difference in the way the Federal Trade Commission figures net worth after taxes, and the way Fortune magazine, whose staff did an excellent job in getting up this ranking, figured net worth, on what they called "investment."

The Federal Trade Commission takes the figures at the end of the year, when the accrued or kept profits are put into the company, and averages that with the situation at the beginning of the year in figuring net worth. Fortune magazine took the figures at the end of the year; that is, after the retained earnings had been put into the corporation. So Fortune magazine's percentages would be a little lower than the Federal Trade Commission figures, but not much.

STOCK APPRECIATION

Another way of appraising the extraordinary profitability of the drug companies is by examining the appreciation of their stock. How has the profitability of this industry reflected itself in stock prices and dividends? On January 3, 1949, 400 shares of American Home Products stock could have been purchased for $10,000. The stock was split 2 for 1 on November 14, 1957. The market value of 800 shares at the closing price on December 31, 1959, of 171½ amounted to $137,200. On an investment of $10,000 this is a net gain of $127,200 in an 11-year period. During this same 11-year period, total dividends on the original purchase would have returned a total of $16,480.

On December 31, 1948, 225 shares of Smith Kline & French stock could have been purchased for $9,900. This

stock was split 2 for 1 on September 13, 1950, 3 for 1 in November 1954, and 3 for 1 on May 29, 1959, or a total of 18 for 1 over this period. The market value of 4,050 shares—225 times 18—at the closing price on December 31, 1959, of 60½ would have been $244,013. On a $10,000 investment this is a net gain during the 11-year period of over $230,000. During this same 11-year period total dividends on the original purchase would have amounted to $20,070, or twice the investment. In citing these figures I want to reemphasize my belief in the profit system, and in the desirability of reasonable profits. But an essential element of the profit system is the existence of price competition, which, it is assumed, is the force that protects the consuming public. But with profits such as I have cited here, can there be any doubt that there is little or no price competition among the major drug manufacturers?

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. KEFAUVER. I am happy to yield to the distinguished Senator from Washington.

Mr. JACKSON. I have not had an opportunity to follow in detail the work of the chairman of the subcommittee, the distinguished senior Senator from Tennessee. I do know, however, that as a good lawyer he has always pursued his investigations with a high sense of objectivity. I feel that this is indeed a vital area of public interest. I am sure the Chairman knows that any wrongdoing, as far as the effect on the public is concerned, does not justify a condemnation of all drug companies. But it is clear from the evidence presented here by the Senator from Tennessee that harmful practices are widespread. I wish to commend the Senator for bringing to the attention of the Senate today this very important problem affecting all Americans.

Mr. KEFAUVER. I thank the Senator from Washington very much for his interest and for his contribution.

Mr. SMATHERS. Mr. President, will the Senator yield?

Mr. KEFAUVER. I am very happy to yield to the distinguished Senator from Florida, who has given this subject much consideration and study over a period of many years, and who was the first and very impressive witness before our subcommittee when we started this series of hearings.

Mr. SMATHERS. I wish to highly compliment the able Senator from Tennessee, first, on conducting this investigation, which is so vital to so many American citizens, particularly the elderly American citizens who, as they move down life's pathway, find themselves developing various types of diseases and needing various types of medical remedies to keep themselves going.

We have a large percentage of those people in our State. I know from my visits to the State that they are greatly impressed with the hearings which the Senator from Tennessee is conducting. They, like many of us, are considerably disturbed by what is becoming more and more clear, namely, that there are certain drug manufacturers—and I do not say all of them are, and I am sure the Senator from Tennessee does not include all of them or wishes to bring a blanket indictment against all of them—who are taking what amounts to an exorbitant profit with respect to what the cost to them is of manufacturing their product, as compared with what they are asking for it when they merchandise that product. It weighs very heavily on these elderly people, and they are applauding the fine job the Senator from Tennessee is doing.

They recognize just as well as I do that he is being criticized by certain groups. Of course that is the privilege in every democracy, that those who wish to make protest can easily and readily do so. However, the people in my State, generally speaking, highly approve of the hearings which the Senator from Tennessee is conducting in the objective and impartial manner that he is following. They cannot help believe from what they have learned firsthand in what he is developing that the pattern of too high prices for low-cost drugs should somehow be stopped.

I cannot help but believe that my friends in the drug manufacturing industry and also many of my doctor friends, if they wish to head off what will amount to socialized medicine, along with the socialization of other parts of our industry, must recognize that some relief must be given to the average citizen, particularly the elderly citizen who must use these drugs and who does need some medical attention. Certainly there must be some better way found than now exists with respect to the purchasing of these drugs, so that they may be within the reach of those people who need them the most.

My doctor friends, I believe, are beginning to realize that there must be a better way, as the facts are unfolded in connection with the drug investigation. I believe that most of my doctor friends recognize that in many instances these prices are out of line. Not only are these protests, from the people who must pay for the drugs, directed against the drug producers, but in many instances also against the doctors, who, in fact, do not deserve to have them directed against them. They seem to be the recipients of a great many protests of which they are not deserving.

I should think that they would be very happy to join with the able Senator from Tennessee in getting to the public all the information with respect to this investigation, so that the average person who must buy drugs will recognize that it is not so much the doctor bill which is so high, but that it is the general cost of medicines which has gone up, in some cases justifiably, but in many instances beyond the measure of reasonable justification.

So, Mr. President, I wish to congratulate the able Senator from Tennessee for the job he is doing. I know he will keep up the work, and follow it to its logical conclusion.

I am sure we do not want to regulate industry. However, I would think that certainly an industry in which it has been demonstrated that a few members of it have gotten themselves out of line with respect to what is a reasonable profit, ought to bring themselves back into line on a voluntary basis. Otherwise, in time, as certain as we stand here on the floor of the Senate, the protests of the American citizenry will be so persuasive and so uniform and so loud that if the industry does not correct this situation itself, then unfortunately the Government will be forced ultimately to move into this field. That is something none of us wants.

Therefore, I believe that the Senator from Tennessee is doing a service to the drug industry and to everyone else by laying on the record the facts, so that everyone might see them, in the hope that those people who have most to do with some of these rather unpleasant facts will themselves remedy the situation so that the Government will not have to move in and remedy it.

Mr. KEFAUVER. Mr. President, I am very grateful to my distinguished friend from Florida for the statements he has made. I certainly agree with him. If there is any man in the Senate who has dug into this problem over a period of many years and knows it at first hand, it is the Senator from Florida. He has been very encouraging to the members of the subcommittee and to our staff so that we might do the best job of which we are capable. We certainly appreciate his support. I feel as he does that we do not want to have price fixing and Government regulation. Much could be done to lessen the severity of the problem through cooperation among the pharmaceutical industry, the pharmacists, and the medical profession. Cooperative efforts of this type would be far more helpful to the public interest than the preparation and issuance of unfounded attacks upon the subcommittee.

What the Senator said about the cost of drugs and the influence it is having, and the pressures all this might bring for something other than a free enterprise system, is shown by a recent poll. It shows that most people think that prices ought to be regulated. We want to reverse the trend of that poll and that can be achieved only by the existence of price competition in the industry. Another point I think should be borne always in mind is that last year, for the first time, the expenditures on drugs and appliances amounted to more than for medical fees. That is a matter to which physicians, I am sure, are giving a great deal of consideration. I thank my colleague very much for his statement and contribution.

Mr. HILL. Mr. President, will the Senator yield?

Mr. KEFAUVER. I am very happy to yield to my good friend from Alabama, the chairman of the Committee on Labor and Public Welfare.

Mr. HILL. I have not had an opportunity to read the testimony before the Senator's subcommittee; but certainly no one could have been present today and heard the speech of the Senator from Tennessee and the very revealing statements he has made—and, I may

say, in many instances they were challenging statements—without being very much impressed, or without realizing the excellent work he has done. He has been devoted and hardworking, and has given leadership to a matter which is of the utmost importance, not only, particularly, to our senior citizens, as has been emphasized by the Senator from Florida [Mr. SMATHERS], but really to all the people. I commend the senior Senator from Tennessee upon the work he has done.

Has the Senator received adequate cooperation in his investigation from the various Government agencies concerned with this problem?

Mr. KEFAUVER. We have not as yet called the representatives of some of the Government agencies before us. We shall do so. But I must say that I regret that the cooperation from the National Institutes of Health has been rather limited. This has forced the staff of the subcommittee to go to a great deal of difficulty in getting from other sources technical information which we thought the NIH could have furnished us immediately.

Mr. HILL. Does the Senator know of any reason why the NIH has not been more cooperative?

Mr. KEFAUVER. I do not know; but Dr. Shannon has supplied only a limited part of the information which we have requested. What we have sought from NIH is technical information concerning the nature of properties of important drugs on which they have expert knowledge.

Mr. HILL. Has Dr. Shannon stated any reason for not doing so?

Mr. KEFAUVER. I know of no particular reason why he has not done so. We have received fair cooperation from the Food and Drug Administration. I hope we shall secure their full cooperation on legislative recommendations and in their testimony.

I have reason to believe that the Federal Trade Commission, which has some part in this work in connection with misleading and false advertising, will give us very good cooperation. But certainly we could use better cooperation from the NIH.

Mr. HILL. Has the Senator from Tennessee any particular thought or suggestion in mind with reference to such cooperation?

Mr. KEFAUVER. We need the technical knowledge and information of their scientists in the evaluation of these drugs. We also need their help in providing information concerning the side effects of drugs for purposes of comparison with the claims made in the advertisements of the pharmaceutical houses. Such information has been very late in getting to us, and very scanty when it has arrived. There can be no doubt that NIH possess far more information than it has seen fit to supply to the subcommittee.

Mr. HILL. As I have already said, the senior Senator from Tennessee certainly has done much hard work in this field. He has made a great contribution in bringing this most important matter to the attention of the Senate and of the country. He deserves the cooperation of every department and agency of the Government.

Mr. KEFAUVER. I do not wish to imply that the Government departments and agencies have not done anything; but the information submitted by the NIH has been extremely limited. It could be of much more value to us. In contrast, the State Department and the procurement agencies have rendered valuable cooperation.

I appreciate the presence of the Senator from Alabama during this discussion today because, as I have said on many occasions, I do not believe there has ever been a Member of Congress who has given such great attention to or who has been more interested in medical research and the plight of the people who need medication than the senior Senator from Alabama. It has been through his untiring efforts that great headway has been made by the medical profession, in some cases by pharmaceutical manufacturers, and by universities and others, in conducting research, much of which has led to remedies which have benefited many American people.

At the recent hearing we held on tranquilizers, Mr. Mike Gorman pointed out that some $5 million was available as the result of an appropriation for research in mental health made by the Appropriations Subcommittee headed by the Senator from Alabama, but that contracts for only $100,000 have actually been let.

Although the drug companies have entered into the cancer research program, they have not shown very much interest in research in the mental health program. I believe their chief objection has been to the patent policy, a policy which is quite lenient, as I see it.

Mr. HILL. As the Senator from Tennessee knows, more than half of all the hospital beds in the United States are occupied today by persons suffering from some form of mental illness. Surely there is a most compelling need for greater research and greater research programs in the field of mental illness.

Mr. KEFAUVER. The Senator is exactly correct. There is urgent need that this money be made available. In cancer research the pharmaceutical companies have taken contracts and are engaged in the research program. But in the field of mental health research, they have been very reluctant to act, as the Senator from Alabama so well knows.

The Government's patent policy is very lenient. It provides that the company may secure a patent; but the Government insists that if a company cannot furnish enough of a product to supply the national need, then the Government retains the right, as it should, to cause other companies to be licensed, at least until the demand has been met. I think that is a lenient position for the Government to take. I think the welfare of the general public certainly justifies as a minimum a policy of that kind.

Mr. HILL. The distinguished Senator from Tennessee was very generous in his remarks about the senior Senator from Alabama and the efforts of the Senator from Alabama in behalf of the programs for medical research and for better health for the American people.

There has been no stronger supporter, more interested, or devoted supporter of these programs than the senior Senator from Tennessee.

Mr. KEFAUVER. I thank the Senator from Alabama. I always look to him for guidance in these programs, because I know he feels deeply about them, and has a great fund of information upon which we can all rely.

STOCK OPTIONS

Another indication of the industry's extraordinary profitability is the stock option granted to the president of Carter Products, Inc., Mr. Hoyt. On July 16, 1957, he was granted options to purchase 57,500 shares of stock at $27.50 over a 5-year period. The president of this company exercised 34,500 of these options at $27.50 on July 28, 1959, at a total cost to him of $948,750. At the closing price of 75½ on Monday, January 25, 1960—the day before Mr. Hoyt appeared as a witness before the subcommittee—these shares had a total market value of $2,604,750. Had the price remained unchanged for a few more days, until the end of 6 months after the exercise of the options—in July 1959—the president of this company would have been able to realize a total gain, after taxes, on this transaction of $1,242,000, because under such plans he is subject only to a capital gains tax of 25 percent. Moreover, Mr. Hoyt still has 23,000 options unexercised. At the difference between the closing price on January 25, $75.50, and the option price of $27.50, his remaining options were worth a paper profit of $1,104,000 before taxes, and $828,000 after taxes. The combined gain at that price for all options, exercised and still pending, would have been $2,760,000 before taxes and $2,070,000 after taxes.

The stock market, however, has had something of a decline in the last 2 months, and Carter Products stock quotation has declined with it. It closed yesterday, according to the Wall Street Journal, at 62¾. Recalculating Mr. Hoyt's profit on his stock options yields the following figures: 34,500 shares worth $2,164,875; cost as before, $948,750; total gain, $1,216,125; net after taxes, $912,093. In other words, even after a big drop in the market, he could just about double his money in less than 8 months. On the 23,000 options not yet exercised, the calculations would be: market value, $1,443,250; cost, $632,500; total potential gain, $810,750; net after capital gains tax, $608,062. Thus, the whole transaction, if completed at yesterday's close, would net Mr. Hoyt $1,520,155. Of course, that is in addition to his very substantial salary.

It is interesting to note that the president of Carter Products, Inc., is the holder of 50.12 percent of the stock of Bahdelan Corp., a family-owned holding company. This holding company on May 15, 1959, held 50.92 percent of Carter's outstanding stock. Obviously, the president of Carter Products, Inc., merely voted himself this bonanza. I think it is high time for the Ways and Means Committee of the other body and the Finance Committee of this body to reexamine the whole question of stock options in the

light of this and similar examples which have been developed by our subcommittee.

I believe I should point out that that very tremendous takeout from the company—because a stock option amounts to withdrawing or taking money from the company—occurs in the case of a comparatively small company. Carter Products is not even one of the 500 largest corporations in the United States. Yet the salary and the stock options which Mr. Carter has enjoyed total more than the corresponding items in the case of most of the $500 million or $1 billion corporations. In fact, I do not personally know of any other corporation official in the industries which we have investigated who has received more money than the amount received in this case. Again, I say this is received by the head of a pharmaceutical company which holds an exclusive patent monopoly in the United States. His profits and his stock options are received from the sale of a drug which people have had prescribed for them by their physicians. This situation is very different from that of a company which produces luxury items, and which a prospective buyer may shop around for or even elect not to buy.

Incidentally, Mr. Hoyt said that if his company did not make at least 20 percent on investment after taxes, he would regard the operation as unsuccessful, and he would withdraw his funds from the business. It might be pointed out that the average profit on investment for all companies in the United States is 11 percent.

RESEARCH

The principal explanation offered by the drug companies for their high prices and profits is that they are necessary in order to support research. Like everyone else I am, of course, strongly in favor of research, in regard to drugs and all other products.

But this explanation is subject to criticism on several grounds. In the first place, the profit rates which I have been referring to are profits after taxes and after all expenses, among which of course is research.

In the second place, much of what the drug industry calls research is of very dubious and limited value to the public. In this connection I would like to refer to the testimony before our subcommittee of Dr. Haskell Weinstein, who recently served as medical director of the J. B. Roerig division of the Charles Pfizer Co. Excerpts from Dr. Weinstein's testimony are presented in attachment A.

In the third place, expenditures on research of the 20 largest drug companies represented only 6.4 percent of their sales dollar. This was only a little more than one-fourth of their selling expenses—24.0 percent—and less than one-fourth of their profits before taxes—26.1 percent. It is within the realm of probability that the amount spent on research is actually less than the amount spent on the portion of advertising material which is ignored or never even read by physicians. And the irony is that the selling and advertising expenditures do little, if anything, to expand the total consumer market for drug products. The market, in the form of sick and ailing people, is there to begin with.

Finally, as has been brought out in the hearings, many of the drugs sold in large quantities and at a substantial profit by American drug companies were actually developed in foreign lands—see table 10.

CONCLUSION

Mr. President, on January 26, a number of editorials which were inserted in the CONGRESSIONAL RECORD by the distinguished minority leader were critical of the work of the Antitrust and Monopoly Subcommittee in the current drug investigation. This country, fortunately, has a free press; and it is the prerogative of our editors to question Government officials in any of their activities. The subcommittee's drug investigation has also been the subject of many other editorials which welcome the inquiry and comment favorably on what it has thus far uncovered. I have selected a typical sample of these editorials, to be made a part of the RECORD at the end of my remarks.

Mr. President, I have long been dedicated to the belief that our Nation's existence to a large extent depends upon making effective our free, competitive enterprise system. Our constitutional fathers had a fierce devotion to the principles of freedom. An obligation of freedom is the acceptance of our responsibilities and the devising of new courses of action, where necessary, without fear, favor, or complacency. We should never lose the grace of critical evaluation. One of the truly noble ideas defined by our constitutional fathers was that this is a nation dedicated to the proposition that each and every person has a free man's right to work, thrive, and prosper according to his own capabilities.

In 1890, the Congress made explicit this dedication to freedom in the economy, by enacting the Sherman antitrust law, which was followed in 1914 by the Clayton and the Federal Trade Commission Acts. Despite all the good that has been accomplished under these laws, the fact remains that in many important areas of our economy, competition no longer seems to be sufficiently effective to protect the public interest. How to provide that protection without impairing our freedoms is the fundamental question confronting the subcommittee in its inquiry into administered prices. Those who criticize the subcommittee for having as yet failed to come up with a solution would do the Congress and the Nation a great service if they would present their answer to the problem.

The work and duties of the Antitrust and Monopoly Subcommittee are complex and difficult.

Here I wish to pay high tribute to the staff of the subcommittee. The staff members have worked day and night in trying to obtain the facts. I wish to say they have been careful in the factual presentations which have been made. If any error has crept in, they have immediately corrected it. However, I know of no errors which have actually gotten into our record. The staff members have been very painstaking. In my opinion they have done an outstanding job, and all of them deserve the gratitude of the public.

No corporation wants to be investigated. There are many in our Nation dedicated to the proposition of the status quo. There are many who interpret "free enterprise" as the right of corporate managers of great corporations to regulate prices, production, and employment free from competition, free from congressional or public scrutiny, and free from any concern with the public interest.

Under the Constitution, Congress has the responsibility to regulate interstate and foreign commerce. I am afraid that we have been lax in our responsibility. Instead of regulating interstate and foreign commerce, I am afraid that commerce has increasingly come to regulate us. To those who are content to let the economic decisions continue to be made by the managers of our giant corporations, free from competition or public accountability, I cite the drug industry, which, of all industries, should show the greatest manifestations of concern for the public interest, and yet appears to show the least.

Mr. President, I yield the floor.

The matter submitted by Mr. KEFAUVER, and previously ordered to be printed in the RECORD, are as follows:

TABLE 1.—*Prednisone: Merck's prices to druggists, comparative United States and foreign, 1959*

[5 mg. tablets, bottles of 100]

City and country:	*Price to druggist*
London, England	[1] $7.53
Rio de Janeiro, Brazil	[2] 14.15
Armsterdam, Holland	16.05
Vienna, Austria	[1] 17.16
United States	17.90
Toronto, Canada	[1] 20.80
Rome, Italy	[1] 22.16
Colon, Panama	[1] 22.99
Sydney, Australia	[1] 24.00
Tokyo, Japan	27.28

[1] Calculated from price for 30.
[2] Calculated from price for 20.

Source: U.S. price: American Druggist Blue Book, 1959–60. Foreign prices: Collected by the U.S. Department of State through the American Embassies in spring of 1959.

TABLE 2.—*Prednisolone, 5-milligram tablets, computed cost based on bulk price transaction and contract processing charges*

	Per 1,000
1. Bulk price at which Upjohn sold to Schering in 1958: [1] $2.37 per gram. Material for 1,000 tablets (5×$2.37)	$11.85
2. Allowance for wastage (5 percent)	.62
3. Tableting charge	2.00
4. Bottling charge (10 bottles of 100 tablets each)	1.20
Total	15.67

COMPARISON BETWEEN COMPUTED COST AND ACTUAL PRICES

	Per 100	Per tablet
Computed cost, excluding selling and distribution costs	$1.57	$0.016
Actual prices: [2]		
To druggists	17.90	.179
To consumer (list)	29.83	.298

[1] As reported to the subcommittee by Upjohn and by Schering.
[2] Upjohn (Delta-Cortef) from catalog; Merck (Hydeltra), Pfizer (Sterane), Schering (Meticortelone), Parke, Davis (Paracortol) from 1959–60 edition, "American Druggist Blue Book." (Parke, Davis consumer prices 1 cent higher per bottle than others.)

TABLE 3.—*Comparison of rates of return after taxes in selected industries, 1957*

Industry:	Percent of return
Drugs	21.4
Industrial chemicals	16.2
Office and store machines and devices	15.5
Motor vehicles	15.5
Flat glass, glassware (pressed or blown)	14.9
Electrical machinery, equipment and supplies	14.2
Engines and turbines	13.5
Abrasives, asbestos and miscellaneous nonmetallic mineral products	13.3
Soap, cleaning, and polishing preparations	13.0
Petroleum refining	12.8
Tobacco products	12.6
Blast furnaces, steel works, rolling mills	12.4
Dairy products	11.9
Bakery products	11.4
Tires and inner tubes	11.3
All manufacturing	11.0

Source, industries: Federal Trade Commission; all manufacturing: FTC-SEC Quarterly Financial Report for Manufacturing Corporations.

TABLE 4.—*Schering Corp. purchase price, 1952, and profits after taxes, 1952 to June 1957*

[In thousands]

Year	Profits after taxes	
	Annual	Cumulated
1952	$1,729	$1,729
1953	1,729	3,458
1954	1,659	5,117
1955	8,529	13,646
1956	12,305	25,951
1957 (6 months)	6,008	31,956

Purchase price: $29,132,000 in March 1952.

Source: Schering proxy statement, September 1957.

TABLE 5.—*Comparative U.S. and foreign prices of tranquilizers, 1959*

City and country	Trade name	Company marketing	Price to—	
			Druggist	Consumer
	Chlorpromazine, 25 mg. tablet, 50's:			
United States	Thorazine	Smith, Kline & French.	$3.03	[1] $5.05
Toronto, Canada	Largactil	Rhone-Poulenc	3.75	7.05
Sydney, Australia	do	May & Baker (British).	.94	1.69
Paris, France	do	Specia (Poulenc subsidiary).	.51	.77
Dusseldorf, Germany.	Mogaphen	Bayer	.97	1.90
Rome, Italy	Largactil	Farmitalia (owned 51 percent by Montecatini, 49 percent by Poulenc).	1.22	1.62
Tokyo, Japan	Wintermin	Shionogi & Co	1.91	2.29
	Contomin	Yoshitomi Pharmaceutical.	1.88	2.28
	Sevamine	Banyu Pharmaceutical Co.	2.14	2.57
Rio de Janeiro, Brazil.	Amplictil	Rhodia	$1.53	$2.00
Brussels, Belgium	Largactil	Specia	1.37	1.96
Amsterdam, Holland.	do	do	1.31	1.93
London, England	do	May & Baker	.77	[2]
	Prochlorperazine, 10 mg. tablet, 50's:			
United States	Compazine	Smith, Kline & French.	3.93	[1] 6.55
Toronto, Canada	Stemetil	do	3.60	6.75
Sydney, Australia	do [3]	May & Baker	2.84	5.00
Paris, France	Tementil	Specia	.80	1.20
Dusseldorf, Germany	Nipodal	Bayer	.80	1.58
Brussels, Belgium	Stemetil	Specia	1.61	2.30
London, England	do [3]	May & Baker	2.24	[2]

[1] Computed from price to druggist at standard markup.
[2] Not available.
[3] Price reported to subcommittee for 5 mg. tablet has been doubled.

Sources: U.S. price: American Druggist Blue Book, 1959–60. Foreign prices: Collected by the U.S. Department of State through the American Embassies in spring of 1959. (Pro rata conversion to 50 tablets per package by subcommittee staff where necessary.)

TABLE 6.—*Comparative U.S. and foreign prices of meprobamate, 1959*

[400-mg. tablet, 50's]

Country	Seller	Trade name	Price to—	
			Druggist	Consumer
United States	Carter	Miltown	$3.25	$5.42
	Wyeth (American Home).	Equanil	3.25	5.42
Argentina	Cyanamid	Miltown [1]	.745	.8475
Austria	do	Miltaun [1]	1.56	3.02
	Petrasch (many others)	Meprobamat [2]	.60	1.18
Australia	Cyanamid	Miltown [1]	3.47	5.86
	Wyeth	Equanil [1]	3.47	5.86
	Imperial Chemical	Mepavlon [3]	2.81	4.69
	Knoll Laboratories	Pimal [1]	2.24	3.92
Brazil (Rio)	Cyanamid	Miltown [1]	2.20	2.86
	Wyeth	Equanil [4]	2.20	2.86
Belgium	Cyanamid	Miltown [1]	3.25	4.64
	Imperial Chemical	Mepavlon [4]	1.75	2.50
	Roter, Holland (many others).	Artolon	.91	1.30
Canada	Wyeth	Equanil	3.60	6.75
	Ayerst (American Home).	Miltown	3.75	7.05
France	Byla	Equanil [5]	2.65	3.98
Germany	Cyanamid	Miltaun	.69	1.33
	Asche (Wyeth)	Aneural [5]	1.36	2.78
	Tropen Werke	Cyrpon	.66	1.30
Great Britain	Cyanamid	Miltown	$1.48	
	Wyeth	Equanil [2]	1.41	
	ICI	Mepavlon [3]	1.45	
Holland	Cyanamid	Miltown [1]	3.56	$5.24
	Wyeth	Quaname [6]	1.12	1.65
	ICI (many others)	Mepavlon [1]	1.12	1.64
India	Lederle	Miltown	4.79	5.99
	Wyeth	Equanil [2]	4.25	4.73
Iran	Cyanamid	Miltown [1]	4.68	5.20
	Wyeth	Equanil	3.55	3.95
	Le Petit	Per Tranquil	3.28	3.65
	Wallace	Milinorm	3.60	4.00
Italy	Cyanamid	Miltaun [3]	1.77	2.36
	Wyeth	Quanil [4]	1.94	2.58
	Pierrel (many others)	Paxin [7]	1.33	1.77
Japan	Lederle	Miltown [7]	2.50	3.33
	Banyu	Equanil	2.56	3.33
Mexico	Cyanamid	Miltown [1]	2.00	2.40
	Wyeth	Equanil	1.80	2.18
Venezuela	Cyanamid	Miltown [1]	5.44	7.06
	Wyeth	Equanil [1]	5.44	7.06

[1] Prices have been calculated for 50 from prices given for 25 tablets.
[2] Prices have been calculated for 50 from prices given for 20 tablets.
[3] Prices have been calculated for 50 from prices given for 30 tablets.
[4] Prices have been calculated for 50 from prices given for 24 tablets.
[5] Prices have been calculated for 50 from prices given for 36 tablets.
[6] Prices have been calculated for 50 from prices given for 40 tablets.
[7] Prices have been calculated for 50 from prices given for 100 tablets.

Source: U.S. price: American Druggist Blue Book, 1959–60. Foreign prices: Collected by U.S. Department of State through the American Embassies in spring of 1959. (Prices converted to dollars at official rate.)

TABLE 7.—*Comparative U.S. and foreign prices of serpasil, 1959*

[Bottles of 100]

City and country	0.25 mg. tablet price to druggist	1 mg. tablet price to—	
		Druggist	Consumer
United States	$4.50	$12.00	[1] $20.00
Sydney, Australia	1.35	4.41	6.92
Vienna, Austria	1.03	2.78	5.03
Toronto, Canada	2.70	9.87	16.45
Paris, France	.83	1.21	1.82
Dusseldorf, Germany	[2] 1.05	[3] 3.42	[3] 6.41
Amsterdam, Holland	1.09	(4)	
Bombay, India	(4)	5.29	(4)
Tokyo, Japan	1.75	5.56	6.94
Brussels, Belgium	[2] 1.89	[5] 4.24	[5] 6.06
Rio de Janeiro, Brazil	[2] 1.95	5.53	7.19
Tehran, Iran	(4)	[5] 4.87	[5] 5.39
Rome, Italy	[2] 1.83	[6] 4.90	[6] 6.48
Istanbul, Turkey	[2] 2.52	(4)	
London, England	1.06	3.94	
Caracas, Venezuela	[2] 3.05	7.85	10.20

[1] Retail fair trade minimum.
[2] Calculated from price for 40.
[3] Calculated from price for 50.
[4] Not available.
[5] Calculated from price for 30.
[6] Calculated from 20.

Source: U.S. price: American Druggist Blue Book, 1959–60. Foreign prices: collected by the U.S. Department of State through the American Embassies in spring of 1959.

TABLE 8.—*Meprobamate, 400 mgm. tablets*

COMPUTED PRODUCTION COST BASED ON BULK PRICE TRANSACTIONS AND CONTRACT PROCESSING CHARGES (EXCLUSIVE OF SELLING AND DISTRIBUTION COSTS)

[100,000 tablet order]

	Per 1,000 tablets	
	To Carter Miltown	To Wyeth Equanil
Material—400 grams:		
Average cost to Carter in December 1958 of $4.35 per pound [1]	$3.84	
Price Wyeth pays Carter of $10 per pound [1]		$8.82
Wastage, 2 percent	.08	.18
Tableting charge	2.00	2.00
Bottling charge (20 bottles of 50 tablets each)	1.40	1.40
Royalty to Carter, 5 percent of selling price		2.60
Total computed production cost per thousand	7.32	15.00

COMPARISON BETWEEN COMPUTED PRODUCTION COST AND ACTUAL PRICE

	Per 1,000	Per tablet
Computed production cost, exclusive of selling and distribution costs:		*Cents*
Carter	$7.32	0.7
Wyeth	15.00	1.5
Actual prices, both brands:		
To wholesaler, at $2.60 for 50	52.00	5.2
To druggist, at $3.25 for 50	65.00	6.5
To consumer, at $5.42 for 50	108.40	10.8

[1] As reported to subcommittee by Carter Products' Inc.

Source of prices: 1950–60 American Druggist Blue Book.

TABLE 9–A.—*Fortune ranking of major industrial corporations by net profit after taxes as percent of invested capital, 1958*

Rank	Rate	Company
	(38.2)	(Carter Products, Inc.) [1]
1	33.5	American Home Products Corp.
2	33.1	Smith Kline & French Laboratories.

[1] Not in Fortune List. Source: Moody's Industrials 1959; data for fiscal year ending Mar. 31, 1959.

TABLE 9–A.—*Fortune ranking of major industrial corporations by net profit after taxes as percent of invested capital, 1958*—Con.

Rank	Rate	Company
3	32.4	Gillette Safety Razor Cos.
4	29.3	Revlon, Inc.
5	28.9	Avon Products, Inc.
6	28.4	Chemstrand Corp.
7	26.6	Champion Spark Plug Co.
8	24.6	Botany Mills.
9	24.1	Brunswick-Balke-Collender Co.
	(23.7)	(Norwich Pharmacal Co.) [2]
10	23.6	Pepsi-Cola Co.
11	23.4	Texas Instruments, Inc.
	(23.2)	(G. D. Searle & Co.)[2]
12	22.8	Tecumseh Products Co.
13	22.7	Sterling Drug, Inc.
14	22.6	Rohr Aircraft Corp.
15	22.4	Kellogg Co.
16	22.2	Permanente Cement Co.
17	22.2	Maytag Co.
18	22.2	McDonnell Aircraft Corp.
19	21.8	Schering Corp.
20	21.8	American Chicle Co.
21	21.6	Parke, Davis & Co.
22	21.6	Cessna Aircraft Co.
23	21.4	P. Lorillard Co.
24	21.1	Miles Laboratories, Inc.
25	21.0	Polaroid Corp.
	(20.9)	(U.S. Vitamin & Pharmaceutical Corp.) [2]
26	20.4	Chance Vough Aircraft, Inc.
27	20.3	McGraw-Hill Publishing Co., Inc.
28	20.2	Briggs & Stratton Corp.
29	20.1	Warner-Lambert Pharmaceutical Co.
30	19.8	Thomas J. Lipton, Inc.
31	19.4	Mesta Machine Co.
32	19.3	United Engineering & Foundry Co.
33	19.3	Northrop Aircraft, Inc.
34	19.1	Minnesota Mining & Manufacturing Co.
35	19.0	American Motors Corp.
36	18.5	General Electric Co.
37	18.3	Gerbe Products Co.
38	18.1	Minute Maid Corp.
39	18.0	Campbell Taggart Associated Bakeries.
40	18.0	The Upjohn Co.
41	18.0	Temco Aircraft Corp.
42	17.9	Otis Elevator Co.
43	17.8	R. J. Reynolds Tobacco Co.
44	17.6	Ingersoll-Rand Co.
45	17.5	International Business Machines Corp.
46	17.4	Hershey Chocolate Corp.
47	17.3	Addressograph-Multigraph Corp.
48	17.3	Chas. Pfizer & Co., Inc.
49	17.2	Zenith Radio Corp.
50	17.1	Merck & Co., Inc.
*	*	* * *
55	16.3	Vick Chemical Co.
*	*	* * *
70/71	(14.8)	(Mead Johnson Co.).[2]
*	*	* * *
73	14.6	Abbott Laboratories.
*	*	* * *
83	14.2	Bristol-Myers Co.
*	*	* * *
101	13.2	Eli Lilly & Co.
*	*	* * *
167	11.0	American Cyanamid.
*	*	* * *
231/232	9.5	Average, the 500 largest industrials.
*	*	* * *
460	2.7	Olin Mathieson Chemical.

[2] Not in Fortune List. Source: Moody's Industrial Manual, 1959.

[3] Not in Fortune List. Source: Moody's Industrial Manual, 1959; data for fiscal year ending Nov. 30, 1958.

TABLE 9–B.—*Fortune ranking of major industrial corporations by net profit after taxes as percent of sales, 1958*

Rank	Rate	Company
1	21.9	Amerada Petroleum Corp.
	(21.3)	(G. D. Searle & Co.).[1]
2	18.9	Ideal Cement Co.
3	18.7	E. I. du Pont de Nemours & Co.
4	16.8	Smith Kline & French Laboratories.
5	16.6	Schering Corp.
6	16.5	Standard Oil of California.
7	16.5	Champion Spark Plug Co.
8	16.3	Parke, Davis & Co.
9	16.1	Lone Star Cement Corp.
10	15.5	Ingersoll Rand Co.
11	15.4	United States Gypsum Co.
12	15.2	Kennecott Copper Corp.

[1] Not in Fortune list. Source: Moody's Industrial Manual, 1959.

TABLE 9–B.—*Fortune ranking of major industrial corporations by net profit after taxes as percent of sales, 1958*—Con.

Rank	Rate	Company
13	15.1	Superior Oil Co.
	(14.4)	(Carter Products, Inc.) [2]
14	14.0	Permanente Cement Co.
15	13.7	The Upjohn Co.
16	13.7	Signal Oil & Gas Co.
17	13.5	Phelps Dodge Corp.
18	13.4	Merck & Co., Inc.
19	13.3	The Texas Co.
20	13.2	Gillette Safety Razor Cos.
21	13.1	Eli Lilly & Co.
22	13.1	American Chicle Co.
23	12.7	Cleveland-Cliffs Iron Co.
	(12.4)	(U.S. Vitamin & Pharmaceutical Corp.) [3]
24	12.2	R. J. Reynolds Tobacco Co.
25	12.1	Weyerhaeuser Timber Co.
26	11.9	Eastman Kodak Co.
27	11.9	Gulf Oil Corp.
28	11.8	Ohio Oil Co.
29	11.7	Minnesota Mining & Manufacturing Co.
	(11.7)	(Norwich Pharmacal Company) [1]
30	11.3	American Home Products Corp.
31	11.2	Wm. Wrigley Jr., Co.
32	11.2	United Shoe Machinery Corp.
33	11.1	Polaroid Corp.
34	11.0	Abbott Laboratories.
35	11.0	Harbison-Walker Refractories Co.
36	10.9	Sunray Mid-Continent Oil Co.
37	10.9	Skelly Oil Co.
38	10.8	Corning Glass Works.
39	10.8	International Business Machines Corp.
40	10.8	Chas. Pfizer & Co., Inc.
41	10.7	Champlin Oil & Refining Co.
42	10.6	Chemstrand Corp.
43	10.6	Peabody Coal Co.
44	10.4	Material Service Corp.
45	10.4	Hanna Ore Mining Co.
46	10.1	Chicago Pneumatic Tool Co.
47	10.0	P. Lorillard Co.
48	10.0	Union Bag-Camp Paper Corp.
49	10.0	Tennessee Corp.
50	9.9	Libbey-Owens-Ford Glass Co.
*	*	* * *
55	9.7	Sterling Drug Inc.
*	*	* * *
59	9.4	Vick Chemical Co.
*	*	* * *
69	8.9	Warner Lambert Pharmaceutical Co.
*	*	* * *
83	8.4	American Cyanamid Co.
*	*	* * *
84/85	(8.2)	(Mead Johnson Co.).[1]
*	*	* * *
138	6.4	Bristol-Myers Co.
*	*	* * *
187/188	5.4	Average, 500 largest industrials.
*	*	* * *
437	1.6	Olin Mathieson Chemical Corp.

[2] Not in Fortune list. Source: Moody's Industrial Manual, 1959; data for fiscal year ending Mar. 31, 1959.

[3] Not in Fortune list. Source: Moody's Industrial Manual, 1959: data for fiscal year ending Nov. 30, 1958.

TABLE 10.—*Examples of products developed in university and other noncommercial laboratories in the United States*

[Substance and location]

Antibiotics:
Nystatin, State of New York.
Streptomycin, Rutgers University.
Synnematin, State of Michigan.
Candicidin, Rutgers University.
Neomycin, Rutgers University.
Streptothricin, Rutgers University.
Tyrothricin (tyrocidine and gramiciden), Rockefeller Institute.
Totomycin, Jacques Loeb Foundation.
Chloromycetin, Yale University—by Dr. Paul Burkholder.
Fillipin, University of Illinois.
Fumagillin, N.Y. Botanical Garden.
Polymyxins A and D (U.S. Department of Agriculture), England.
Bacitracin, U.S. Army.
Salk vaccine, University of Pittsburgh.
Other drugs:
Dicumarol, University of Wisconsin.
Heparin, Johns Hopkins University.
Fibrinogen, Harvard University.
Fibrinolysin, Harvard University.
Vitamins: Vitamins will be considered in later hearings. They have not been included

in these lists since, in the majority of cases, the number of workers involved makes it difficult to assess credit to any single individual or country.

TABLE 11.—*Examples of foreign origin drugs in specific product areas studied by subcommittee*

Substance	Country of origin	Date
Antibiotics		
Penicillin	England	1929
Spiramycin	France	1953
Griseofulvin	England	1954
Kanamycin	Japan	1958
Aerosporin (Polymyxin B)	England	1947
Diabetic drugs		
Insulin	Canada	1922
Tolbutamide (Orinase)	Germany	1954
Hormones:		
Aldosterone	Switzerland and England.	1939
Androsterone	Switzerland	1931
Dehydroisoandrosterone	do	1934
Testosterone	do	1935
Pregnanediol (isolation)	England	1927
Progesterone	Switzerland	1934
Desoxycorticosterone	do	1939
Ovarian extract	do	1913
Estrogenic substances	Canada	1943
Dienestrol	England	1938
Sulfas:		
Sulfanilamide	Germany	1935
Sulfamethazine	England	1941
Sulfisomidine (Elkosin)	Switzerland	1944
Tranquilizers and central nervous system drugs:		
Meperidine (Demerol)	Germany	1939
Methadone (Analgesis)	do	1942
Mephenesin	Great Britain	1946
Xylocaine	Sweden	1946
Promethazine (Phenergan).	France	1947
Reserpine	Switzerland	1952
Hydroxyzine (Atarax)	Belgium	1952
Chlorpromazine (Thorazine).	France	1953
Promazine (Sparine)	do	1954
Mepazine (Pacatal)	Germany	1954
Benactyzine (Suavitil)	Denmark	1954
Ritalin	Switzerland	1958
Perchlorperazine (Compazine).	France	1954

ATTACHMENT A

EXCERPTS FROM TESTIMONY BY DR. HASKELL WEINSTEIN

At the present time I am the director of the Chest Hospital at the City of Hope Medical Center, Duarte, Calif. I assumed this position on January 1, 1960. For approximately 1 year preceding this appointment I was employed by a major pharmaceutical company, long enough to make certain observations and reach certain conclusions. My comments will relate to the problem under investigation, namely, the high, possibly excessive prices of drugs. However, I believe it appropriate to mention other important areas of possible abuse.

A major justification for the high prices of many prescription drugs has been the very well publicized vast expenditures of funds and energy by the pharmaceutical manufacturers for what has been labeled "research." This activity has been emphasized to the public and to the medical profession by rather grandiose, self-serving slogans such as "Science for the World's Well Being," and "Research in the Service of Medicine." No clear-cut definition has been given by the representatives of the pharmaceutical industry of just what is included in their definition of research. There can be no question that some very wonderful, exciting, extremely important and productive research has been and is being done within the pharmaceutical industry. However, I do not think that it would detract in any way from these fine and very worthwhile activities to point out that much that is called research in the pharmaceutical industry has little relationship to what most people engaged in academic and research activities would consider to be scientific research. It is difficult to escape the apparent fact that many of these research activities are directed toward promoting private gain, with public benefit and advancement of knowledge, if any, being strictly incidental.

An example of such questionable research has been the molecule manipulation intended to bypass patents and other priority rights, and which has resulted in the flood of "me too" products.

Many examples of such molecule manipulation are available. It must be granted of course that occasionally some slight improvement in a drug has been achieved, but most often the only improvement has been an increase in potency or horsepower. The actual added benefit to the patient has been negligible, if any.

Another type of fruitless research has been the development of a multiplicity of drug combinations. Rarely has good medical rationale been the basis of these combinations. Indeed, such combinations can be detrimental to the patient because they lack flexibility and can compound the problems of dosage and toxicity. Despite advertising to the contrary, it is rarely possible to achieve an ideal drug regimen with a fixed combination of drugs.

Another type of activity which has been called research but which is even more remote has been the "battle of the additives," particularly prevalent among the tetracycline manufacturers. Fantastic amounts of effort and money have been expended in attempting to prove that the addition of certain additives such as citric acid or glucoseamine are of significant benefit to the patient. The proof has frequently been in the form of tortured statistics or vague clinical reports.

These expenditures and efforts are probably a legitimate business expense, however in all fairness to the public they should be considered not as research but as product development, process development, and promotion.

In reference to promotion, it should be mentioned that a great many clinical studies are carried out and extensively supported financially for the sole purpose of producing allegedly scientific articles at regular intervals. These articles are published and actively keep the name of the drug before the medical profession. Reprints of such articles are considered invaluable for detailing the product to physicians. I suspect that the sales manager and his detail men feel naked if they don't have reprints available to give the physician. It is considered essential to have, whenever possible, a steady stream of reprints appearing at regular intervals long after the drug has been originally studied and marketed. Unfortunately, few competent investigators will bother studying a drug which has been available for a long time, unless some unusual or unsuspected application is detected. There are too many new drugs clamoring for attention. Some investigators, however, are willing to provide case reports on an established drug, using the funds received from the manufacturers to support their studies in other, more fruitful, areas.

It may be of interest to the committee to know that a substantial number of the so-called medical scientific papers that are published on behalf of these drugs are written within the confines of the pharmaceutical houses concerned. Frequently the physician involved merely makes the observations and his data, which sometimes is sketchy and uncritical, is submitted to a medical writer employed by the company. The writer prepares the article which is returned to the physician who makes the overt effort to submit it for publication. The article is frequently sent to one of the journals which looks to the pharmaceutical company for advertising and rarely is publication refused. The particular journal is of little interest inasmuch as the primary concern is to have the article published any place in order to make reprints available. There is a rather remarkable attitude prevalent that if a paper is published then its contents become authoritative, even though before publication the same contents may have been considered nonsense.

I was involved in a situation which will, I believe, describe the relations between the pharmaceutical house and the publisher quite adequately. I was assigned the task of writing a paper on a new formulation of a broad spectrum antibiotic. I was informed that this paper had been accepted for publication and the 100,000-plus reprints were ordered before I finished the writing assignment. The paper, of course, was published exactly on schedule, which incidentally was within a few days of the introduction of the product on the market. In contrast, scientific papers I have written have waited many months for publication. Of further interest, may be the existence of a journal, recently founded, called Current Therapeutic Research, which appears to be devoted entirely to pharmaceutical promotion. It accepts no advertising as such. However, there is a fee per page for any article published and publication is very prompt. The publisher's major source of income presumably is the lucrative reprint market.

It is my contention that if the companies would carefully evaluate their various expenditures which are at present classified under research, the actual research expenditures would shrink very substantially and would more accurately reflect the pharmaceutical industry contribution to true research. This contribution, nonetheless, would be substantial. However, more careful cost accounting may suggest that a very much greater proportion of expenses should be attributed to promotion and advertising than at present is being assigned. This could modify drastically some of the justification for the frequently high price of certain drugs.

The consumer of drugs, the patient, has no free choice whatsoever as to whether or not he will purchase the drugs that have been prescribed for him by the physician. He can decide not to buy the prescribed drugs but then he is not following advice that he is paying for. The law usually requires that the specific prescribed drug be the one sold by the pharmacist. As a result we cannot apply the same logic nor rules of the marketplace when we talk of drugs as we can when we talk of refrigerators. It is impossible to conceive of anyone specifying the particular brand of refrigerator the buyer must purchase. The entire promotion and advertising program has been directed at the physician in recognition of his special role. He has been taught, one might almost say brainwashed, to think of the trademark name of the drug at all times. Even new disease states have been invented to encourage the use of some drugs. He has been exposed to remarkably little information concerning the efficacy of the drugs he is asked to prescribe. He is given practically no information as to the cost of the drugs to his patients. Instead, he is seduced with gimmicks of all sorts in an attempt to make him loyal to a particular company or a particular drug, with relatively little attention being paid to the specific merits of the drug in question. The patient, who not only must buy the drug, but is also expected to use it, is often exposed to drugs which have been incompletely evaluated, and which not infrequently are hazardous.

In addition to the constant stream of promotion applied directly to the physician, there is a rather intense effort made to reach him through the patient. It is an unfunny joke in the medical profession that the very latest information on new advances in medi-

cine most often appears in the eminent medical journals such as Reader's Digest, Time, and the Wall Street Journal. Some of this is legitimate good reporting. However, much of what appears has in essence been placed by the public relations staffs of the pharmaceutical firms. A steady stream of magazine and newspaper articles are prepared for distribution to the lay press. These may take the form of so-called informative or background articles on conditions such as allergies or edema. Buried within the article, there is often a brief paragraph mentioning that a great new drug has been discovered and manufactured by Company X and the name of the drug is given. The article doesn't say that the reader should rush to his physician and demand the drug, but the implication is usually clear. And, of course, there is nothing to show where the article originated.

Along the same lines it is fascinating to consider how many drugs first become known through the good offices of the Wall Street Journal. The implication of such reports I do not feel entirely competent to discuss. I have wondered, however, what effect such announcements may have on stock market quotations.

It may reflect a personal naivete but it has been my opinion that really worthwhile drugs would need no such promotional efforts. There is unfortunately prevalent within certain medical circles an attitude that the implications of opinions such as mine are that many physicians are grossly remiss in their duties to their patients and that I am slurring my medical brethren. There is no reason to believe that physicians are any less susceptible to the delicate arts of the advertising and public relations specialists than the average intelligent citizen. To make matters worse, physicians are subjected to an almost unbelievable barrage from these sources. The physician's problem is further multiplied by the fantastic number of new drugs appearing constantly. Many of these are marketed before definitive information about them is available. The physician's problem is complex and it is not fair, even impossible, to demand that he bear almost the entire brunt of the defense of the patient from such an overwhelming onslaught. The pharmaceutical manufacturers must bear the burden of proof that their products are exactly what they say they are, and further that they will do what is claimed for them. The final responsibility will always be the physicians and cannot be shared. However, it is essential that he be given the best possible information in a reasonable, adult manner.

Efficacy of drugs is a very difficult area of study. There is a common misconception that under our present laws the Food and Drug Administration determines efficacy of drugs before they are put on the market. The Food and Drug Administration does not attempt to verify the claims made for any particular drug providing that the indications have been studied and that broad tolerance and safety limits have been established. The manufacturer is required to carry out the efficacy studies, and this he does through the services of medical centers and physicians throughout the country. Of course, frequently excellent investigators are involved, and careful objective studies are done. On the other hand, a number of drugs have been put on the market with efficacy claims based on extremely meager and unobjective observations by people not truly qualified to make such observations. Also, there is absolutely nothing in the law to prevent the manufacturer from completely ignoring unfavorable reports. One company in its advertising for one of its products blithely stated that there have been over 200 reports in the literature about this particular drug. They neglect to say that 60 percent are not entirely favorable or pertinent. The Food and Drug Administration does not determine the qualifications or objectivity of the individuals who provide the data on which new drug applications are based. Very meager and uncritical observations have been allowed to serve as justification for granting permission to advertise and market certain drugs for life-threatening conditions. Such uncritical action is potentially dangerous, especially if it encourages the use of an inadequately studied drug to supplant a proven and effective agent.

It is difficult to find in the medical literature comparative studies of many of the drugs presently on the market. The reason for this is quite simple. It is anathema to most of the drug manufacturers to consider comparative studies. The reasons usually given relate to unfair competition and poor sportsmanship, but fundamentally they boil down to the fear that many of our presently popular drugs would not fare very well if compared with established and respected items. Some such studies have been done, a few have even appeared in the literature, and the results have frequently confirmed the reality of such fear.

The drug efficacy problem is also reflected in promotion and advertising. It is my opinion that the intensity of promotion and advertising devoted to any drug varies inversely with the efficacy of that drug. The tranquilizers are an excellent example of such relationship.

SUMMARY OF TESTIMONY ON QUACKERY FROM TESTIMONY OF ARTHRITIS AND RHEUMATISM FOUNDATION TUESDAY, DECEMBER 8, 1959, VOLUME 2 OF TRANSCRIPT

Floyd B. Odlum, chairman of the board of the foundation, testified that at least 5 million of the 11 million people afflicted with arthritis spend about $250 million a year on some form of quack arthritis medicines or cures. He said many of these are sent to him in the mail and he described one of them as a gallon of tequila sent from Mexico with a dead rattlesnake in it. A wine glass of this liquid taken three times a day was supposed to cure arthritis. He said others sent to him were alfalfa tea, mushrooms, copper bands. He said one man owns a uranium mine and claims uranium is good for arthritis.

He said the Arthritis and Rheumatism Foundation has a widespread educational program to better inform the American people about quacks in the field of arthritis. He said the foundation is very seriously concerned with fraudulently advertised drugs and devices because many innocent victims waste money and time in using them.

Dr. Russell L. Cecil, consulting medical director of the foundation, described a new quack remedy as "immune milk" taken from immunized cows and sold to arthritic patients. Dr. Cecil was asked whether many people are driven to buy quack arthritis remedies because steroid hormones are selling at high prices. He replied that these quack remedies are not cheaper than reputable drugs and are apt to be more expensive, and he doesn't think that is the reason they buy quack remedies instead of the real thing.

The major testimony on quack remedies was presented by E. D. Bransome, New York State chairman of the foundation. He urged the subcommittee to look into these quack devices and medicines to see what can be done about them.

Mr. Dixon pointed out that the Federal Trade Commission is responsible for enforcing the laws on false and misleading advertising, and Mr. Bransome's testimony will be referred to them.

Mr. Bransome testified that the FTC laws in this field and the State laws are inadequate. Quacks simply go from State to State, stay out of business for a few years and then resume activity under another name.

He said besides the loss in money, arthritics who use quack remedies are harming their health. He expressed the foundation's finding that arthritis quackery is not being cut down but continues to flourish.

Pointing out that the Federal Trade Commission, the Food and Drug Administration, and the Post Office Department regulate different aspects of the misrepresentation of drug and health advertising, he presented a series of recommendations. First, these three agencies should be given the funds to enable them to get rid of quacks. Second, legislation is needed to place squarely within the jurisdiction of the three agencies the advertising of so-called treatment centers and of unqualified arthritis practitioners. Third, manufacturers of prescription drugs should be required to prove the effectiveness of their drugs on the basis of clinical tests before these drugs can be marketed.

In regard to the third recommendation he explained that nonprescription drugs are exempted from the "new drug" provisions of the Federal Food Drug and Cosmetic Act. In that way a phony patent medicine or quack device can be put on the market with no Government sanction whatever. He said it sometimes takes the Government years to prove a drug or device is phony while its producers reap a harvest.

Inasmuch as a charge proved by one of these agencies has to be proved all over again by the other two, his fourth recommendation was that the decision of any one of these agencies be binding on the other two.

His fifth recommendation was that the Federal agencies, particularly the Federal Trade Commission, make full use of its powers of injunction and its powers to inflict heavy monetary penalties as provided for under existing law.

His sixth and final recommendation was to suggest to all the States the enactment of model drug legislation which would fit into Federal statutes. It is this absence of uniform State legislation which makes it possible for operators to move from one State to another.

Dr. Ronald Lamont-Havers, medical director of the foundation, showed the subcommittee examples of quack arthritis drugs and devices and read into the record their advertising claims and the efforts, often unsuccessful, of the Federal agencies to prosecute.

Miss Ruth Walrad of the foundation gave an example of one such advertisement by a Mrs. Wier which ran in thousands of newspapers and magazines. She estimated Mrs. Wier made between $200,000 and $300,000 at least on her worthless product.

Dr. Lamont-Havers explained why certain examples of advertising were considered deceitful. He said many of these products gave no more relief than a nickel's worth of aspirin.

He showed a number of devices which have been seized by Federal agencies, including uranium pads, a magneto device, a verillium tube, and a glass tube with 10 cents worth of barium chloride that sold for $300. He also went into the activity of the Federal Trade Commission in the matter of books on arthritis. The Federal Trade Commission has secured a preliminary injunction against advertising and promotion in the case of "Arthritis and Common Sense" by Dan Dale Alexander.

[From the New Republic, Feb. 29, 1960]

THOSE PROFITABLE PRESCRIPTIONS

(By the editors)

Take a drug. Modify its chemical structure a little. Give it an unpronounceable chemical name. Apply for a patent. Locate

a disease the new drug will alleviate but not cure. Have it tested by reliable doctors who can be relied upon to find that side effects are minimal. Get it past the Food and Drug Administration. Give it a catchy trade name and promote it to the doctors in a blizzard of mail, journal ads, parties, and detail men.

What have you got? That amazing new wonder drug—bonanza.

What does it cost to make? Almost nothing. What does it sell for? Plenty. What does the company get. Profits. Aren't there any catches in all this? Yes—you have to get there first. This is the pattern that has been unfolding in Senator ESTES KEFAUVER's inquiry into the ethical drug industry over the past 2 months.

Let's go over it again. This is the prescription drug industry, that makes and sells drugs that can only be had on a doctor's prescription. "Ethical" drugs are not advertised to the customers, but only to the doctors who write the prescriptions, and to the pharmacists who fill them. No medicine-show operators here—only highly respectable pharmaceutical houses: Merck, Schering, Upjohn, Smith Kline & French, Wallace Laboratories, Wyeth, and CIBA. They are high among the most profitable corporations in the country.

No snake oil cure-alls here, either: Cortisone, prednisone ("Meticorten"), prednisolone ("Hydeltra") and dexamethasone ("Decadron"), for the relief (but not cure) of rheumatoid arthritis. Chlorpromazine ("Thorazine"), perchlorperazine ("Compazine") and promazine ("Sparine"), tranquilizers for treating institutionalized mental patients, and meprobamate ("Miltown," "Equanil") and reserpine ("Serpasil," etc.) for those who take tranquilizers at home and in the office. To repeat, these are much better than cure-alls—they are cure-nothings. They are more in the class with food and drink, since if you need them today, you need them tomorrow and next year—at a dime a pill, or perhaps 30 cents.

The subcommittee claimed that prednisone tablets could be made for 1.6 cents each, in the bottle, while the big drug houses charged the drugstore $17.90 per hundred, and the customer paid 30 cents apiece. After considerable hassle over selling costs, it developed that one small company was selling them to drugstores for $17 per thousand. The subcommittee figured that Miltown tablets could be made and bottled for seven-tenths of a cent; the president of Carter Products confirmed this exactly, and then said he sells them for 5.1 cents apiece. His net profit after taxes is 1.2 cents per tablet—not quite double the production cost. Once, in perhaps an excess of competitive zeal or patriotism, CIBA offered a thousand Serpasil tablets to the Government at 60 cents; its regular price to the druggist was (and is) $39.50 per thousand.

Why this tremendous spread between costs and prices? Steel, automobiles, and other manufactured products usually show production costs of a half, two-thirds, or three-quarters of manufacturers' selling prices.

The only really acceptable answer that has emerged is that profits are so high. Research sounded like a plausible part of the answer until the subcommittee showed research accounted for only 6½ cents per dollar of sales, and that some of the major developments in recent years came from Europe; and a generous Internal Revenue Service regulation is broad enough to permit inclusion of patent attorneys' fees in the research category, both for getting a patent and protecting it.

Selling and promotion expenses run high in this industry in spite of the fact that there is but a limited target—the medical profession. And it may run higher yet: RCA has just announced its plan for a new medical radio network which will reach right into the doctor's offices. Programs will be sponsored by the pharmaceutical advertisers, selling you-know-what. To almost anyone outside the drug industry and Madison Avenue, spending more (in some cases) on huckstering than on the production of goods (with all those 300 quality control tests per bottle of pills) would seem peculiar. You might wonder how it has been done (pre-RCA):

One doctor sent to Senator KEFAUVER a box, about half the size of an Army footlocker, full of pharmaceutical company mail—literature and samples. This was one month's accumulation. Merck furnished copies of 60 or 70 direct mailings to physicians for a single drug, Decadeon, in just 1 year.

Upjohn has over 1,000 detail men and only 160 senior researchers. A detail man, you must understand, is not a salesman. He doesn't talk prices. He educates the doctors he sees, five of them a day. At this rate, Dr. Upjohn's messengers can get around to every M.D. in the country half a dozen times a year, to talk about Upjohn's new products. With Merck's detail men, and Schering's, and Wyeth's, and Smith Kline & French's, and the others, the average M.D. may get more free education than he needs, though the education is certainly not without value to the busy physician who might not, left alone, familiarize himself with the varieties of new drugs on the market. Unfortunately for the record, no doctor has yet bundled up a month's supply of detail men and shipped them to Senator KEFAUVER.

What about competition? The patent, the snow job, and the detail men take care of that. If there is a good patent on a good product, the patent owner may be highly selective about who gets a license to manufacture or to sell the product. Price cutters don't get many licenses. In the case of prednisone, for which a patent application has been pending for some years, a small producer testified that he will be out of the prednisone business when the patent is issued. The small pill makers will also be out of the prednisone business, because the license holders have agreed not to make bulk sales.

First comer takes all. The first pharmaceutical house to get its new product on the market has a tremendous advantage. The product's trade name, drilled into the doctors' memory by the snowstorm of direct mail, medical journal advertisements, medical journal articles, detail men visits (radio programs?), wins out over the generic name. The doctor gives the patient a prescription for Meticorten ($17.90 per hundred to the druggist). By law the pharmacist is not permitted to supply that patient with prednisone (generic name for Meticorten and similar drugs—$1.75 per hundred). When a trade name is prescribed, he cannot substitute another brand of the identical drug, whatever the relative prices.

However, the system leaks a little. The small companies can deal with hospitals which encourage their doctors to prescribe by generic name or any reliable brand. They can sell some quantities to druggists who are willing to suggest to doctors or patients that prescriptions could be modified to reduce price without changing content. They can sell to the military services and the Veterans' Administration. But the testimony indicates that these markets are pretty thin.

Do you remember the concept of consumers' surplus from your elementary economics course? That is the difference between what you would pay (if necessary) and what you have to pay for something. In competitive markets, competition forces prices down toward cost of production, and the consumer gets the consumers' surplus. In monopolistic situations, the discriminating monopolist prices his products right up to what the traffic will bear, and thus converts consumers' surplus into producers' surplus. It is interesting to note that the drug manufacturers preferred to point out that their drug prices should be compared to the cost of a week in a hospital, rather than to the cost of production. They denied being monopolists, of course, but their language was right out of the monopoly chapter.

Thanks to Senator ESTES KEFAUVER's investigation, which has just resumed and may run into May, the ethical drug industry has been called upon for the first time to explain in public their costs, profits, selling methods, and research. The press has given the hearings wide and effective coverage. The doctors, perhaps on their own initiative, possibly after being nudged by their patients, may begin to take a more active interest in the prices at which prescription drugs can be had. At the moment the patients seem to be angry. A random sampling published in the Washington Star on January 24 quoted 65½ percent of those polled as favoring Federal control of prescription drug prices. Only 21½ percent were opposed, while 13 percent stated no opinion. If two-thirds of the whole population, and three-fourths of those who were willing to be quoted, want peacetime price control after two experiences with OPA and OPS, it looks as if the drug suppliers and the press agents have managed temporarily to price themselves out of favor if not out of an essential market.

[From the New Republic, Feb. 29, 1960]

ONE DRUG—TWO PRICES

The subcommittee found that foreigners afflicted with arthritis could buy the same [anti-arthritic] pills for less than Americans. Upjohn's price in England is $7.53 a bottle, or more than 50 percent less than its U.S. price. This same pattern of excessive pricing was revealed when we questioned the major manufacturers of tranquilizers.

Here, too, a Big Three emerged. They are Carter Products, makers of Miltown; American Home Products, which has a license agreement from Carter to produce the same chemical mixture under its own brand name of Equanil; and Smith Kline & French, which distributes Thorazine. These three corporations are the three most profitable corporations in the United States, not only in the drug field but in all manufacturing fields including steel, oil, machines, etc. Smith Kline & French, for example, made net profits, after taxes, of more than 40 percent in 1959. Carter's profit picture is even better.

Thorazine, distributed by Smith Kline & French, was developed by a French firm under the generic term of Chlorpromazine. Smith Kline & French acquired an exclusive license to market the drug in the United States. The French firm sells the drug at about one cent a tablet in its own country. Smith Kline & French charges six cents per tablet in the United States. Carter and American Home Products sell their Miltown, and Equanil at the same price of $3.25 for 50 tablets of the same strength to drugstores. These two brand name pills are exactly the same under a licensing agreement between the two companies.

In the tranquilizer field, foreigners again are favored with lower prices. Miltown, for example, is sold in Argentina for a fourth of the amount it is priced in this country. (Senator ESTER KEFAUVER, February 9, 1960.)

[From the New York Post, Jan. 22, 1960]

MR. DIRKSEN'S TRANQUILIZER

The drug industry, currently under investigation for profiteering, unveiled a new tranquilizer yesterday in the shape of a Sentor—and tried it out on the Kefauver committee. It didn't work, but there are indications the dosage will be increased.

Senate Minority Leader DIRKSEN, Republican of Illinois, whose membership on the investigative panel has hitherto been mostly in absentia, is now showing a special interest in the proceedings. Indeed, his charge that the hearings are rigged has a special interest label so large and crude that it is almost a caricature of the GOP at its worst.

DIRKSEN's attempt to impugn the committee's motives was plainly designed to discredit the hearings and take the heat off the industry. All his formula lacks is evidence.

As Senator KEFAUVER patiently pointed out, some startling profit figures have been revealed for which the drug manufacturers have no convincing explanation.

Then KEFAUVER's first witness was called as an example of what DIRKSEN is trying to suppress. Walter Munns is president of SKF, which sells more than 25 percent of all tranquilizers in the United States. KEFAUVER's interest in this company is in its astonishing income. Its 1959 profits, after taxes, are estimated at 42 percent of its net worth, a proportion that is second highest of all major American corporations. (Another drug manufacturer is first.)

Mr. DIRKSEN's sedative is unlikely to dispel public interest in such disclosures.

[From the New York Times, Feb. 1, 1960]

THE HIGH COST OF MEDICINES

The price of medicines is high and getting higher, as almost everyone knows. So high is it, in fact, and so great is the demand for drugs that the people of the United States now pay more for them and medical appliances than they do for the services of doctors. No wonder the investigation of the drug industry by the subcommittee headed by Senator KEFAUVER has stirred up such wide interest.

The most impressive defense of high prices brought out in the hearings so far has been the high cost of the research necessary to produce the new medicines, increasingly in demand as medical science breaks ever more new ground. But less evidence has been given up to this week as to other costs, such as advertising, promotion, and sales. One of the recent hearings, however, threw sharp light on all these matters by spreading on the record the experience of one of the Nation's leading companies—especially in regard to a well-known tranquilizer.

This drug was originally produced by a French concern. The American company was given exclusive rights to its production and sale in this country. Comparative price figures given by the subcommittee staff were striking, especially in view of the fact that the American company did not finance the basic research. Fifty tablets cost the druggist in Paris 51 cents. In the United States the same tablets cost $3.03.

The company's record illuminates what the public wants to know: why drugs cost the consumer as much as they do, whether company costs could be reduced and whether prices couldn't be much lower than they are without depriving the drug firms of a reasonable profit. Then, too, there is the question of whether some sort of Government regulation may be necessary to assure all of us who buy medicines that we can get what we need at the lowest possible price. Certainly no industry more directly affects the public health and welfare than this. The task of the Kefauver group is correspondingly important.

[From the Memphis (Tenn.) Commercial Appeal, Dec. 10, 1959]

PROHIBITIVE DRUG COSTS

"Why do certain drugs cost so much?"

Millions of Americans have been asking that question without getting a satisfactory answer ever since the so-called miracle remedies came into common usage.

Those who want to know are the millions now obtaining relief through use of the steroids—the cortisone derivatives—and the even more millions in whom infectious disease has been combated through use of antibiotics.

They want to know why, for instance a steroid manufactured at an approximate cost of a fraction more than a cent per tablet should be retailed at a recommended (and generally asked) price of 30 cents each?

They want to know why, after all the years of antibiotic usage, a going retail price per capsule of 50 cents generally still prevails. The chronic patient who must rely on periodic courses of antibiotics to combat infection knows that he "has had it" after the first few rounds at that price.

And they certainly won't "buy" the contention of the head of one of the Nation's largest pharmaceutical houses that the problem of finding it difficult to pay for needed medication "is just plain inability to pay for the necessities of life where income has not kept in step with today's cost of living." So specious is that argument it should have been left unspoken.

Judged by revelations to the Senate Anti-Monopoly Subcommittee, the pharmaceutical and drug industries have made hefty contributions to today's highly inflationary cost of living.

The Senate subcommittee is trying to get the cost answers. Whether it does or not depends on how exhaustively, intelligently, and conscientiously it carries through on it present inquiry. If it is merely seeking sensation and headlines it is wasting time. If it fails to get into the field of antibiotic costs and retail price markups, its results will be entirely inconclusive.

The matter of cost and fair price are inseparable—or should be because equitable price must be based on production cost. Some of the cost factors seem to have been overlooked in a few of the astronomical figures so far brought out by the Senate subcommittee. Research and discovery are not least of those factors. These must be encouraged, not destroyed. The big, ethical pharmaceutical houses in the United States have made some tremendously important contributions to medicine and thus to humanity. They have underwritten, or made contributions of note to institutional scientific research. This, we hope, they will continue.

While seeking answers to the "why" of high drug costs, it is imperative that the Senate committee not only keep fairness as to price in mind but also fairness as it applies to its own methods. Its inquiry will be worthless if lacking sincere objectivity.

Drugs are costing the American people more than $3 billion a year. That averages $70 per family. It is time to find out if such a backbreaking expenditure is necessary. Last year druggists filled 58.6 million prescriptions costing $5 or more.

The price of some pharmaceuticals is prohibitive for millions even with reasonably decent incomes. An understandable explanation is overdue. The Senate subcommittee should continue its work until it is furnished by those who can give it.

[From the St. Louis Post-Dispatch, Dec. 20, 1959]

AGENDA IN THE DRUG PROBE

Senator KEFAUVER says his investigation of drug prices has shown in its first series of hearings that Congress should consider new legislation, and we agree. Within a single week the pharmaceuticals industry has drawn a public picture of itself so unattractive that it seems doubtful whether its prestige will ever be the same again.

When a bottle of arthritis pills can be bought by a drug house for $1.57, sold to druggists for $17.90, and resold to the public for $29.83, something is wrong somewhere. An even more flagrant example was the purchase of a drug at 14 cents a gram and its resale to druggists at $15 a gram, a markup of 10,000 percent.

The manufacturers sought to justify this high profit on the ground that it is necessary to finance research into new medicines. They have failed to make a case for it. In the examples just mentioned no research was involved at all. Research costs of 8½ percent or so have been mentioned in the hearings, but that is a long way from profits of up to 10,000 percent.

The largest single expense of the major drug houses, the hearings have brought out, is not research at all, but traveling salesmen. These are the so-called detail men who high-pressure doctors into accepting new drugs and specifying them by proprietary name in their prescriptions. One drug house alone employs 730 of these people.

We think the drug industry should question whether this is a proper method of merchandising drugs, and, if it does not, Congress should.

Congress should question whether, by use of the drummer system and other devices, the major drug houses are restraining trade to shut out their smaller competitors.

The Kefauver subcommittee itself should look further into the charge made by John T. Connor, president of Merck, that drug products differ widely in purity and quality, and determine to its own satisfaction whether the charge is true or false. The Merck president had testified in effect that his company can get six times the price at which the same drug in the hands of his smaller competitors goes begging—because pharmacists have to rely on the reputation of their supplier for quality.

If some drug concerns are violating the standards established by the U.S. Pharmacopoeia, they should be brought into line, with new legislation if necessary. If they are not at fault, the buying public—including druggists—should know that consumers need not pay multiple prices to get uniform quality.

Finally, we think both the Kefauver subcommittee and Congress should give their best thought to the question how they can require drugs to be labeled so that the doctor can prescribe by generic rather than trade name and the patient can pay the lowest rather than the highest price charged for the same product.

[From the Baltimore (Md.) Sun, Dec. 11, 1959]

LIGHT ON DRUGS

The president of the Pharmaceutical Manufacturers Association, speaking before a regional meeting of that body, suggests that the current criticism of the high cost of drugs is inspired by persons who are using the industry as a whipping boy in their efforts to enter the back door to socialized medicine. What nonsense.

The reason for the present congressional investigation is perfectly obvious and calls for no such devious explanation. It is hardly an exaggeration to say that the public is shocked by the excessive cost of most of the new drugs. Few households are so fortunate as not to be affected by it. Drugs are a major item in most illnesses. All too often the expense strikes hardest among those least prepared to bear it, which is to say old people suffering from chronic ailments and young people with large families. It is the most natural thing in the world for the public to ask why drugs cost so much. It is in response to that universal curiosity that the Senate's Antimonopoly Subcommittee has instituted its inquiry. Surely this is a legitimate enterprise for Senators especially interested in the antitrust laws.

If the costs are not justified, then the public has every right to know it and to demand reform. On the other hand responsible

manufacturers should welcome the inquiry. It will give them an excellent opportunity to put their case before the public. In that way they may dispel any misunderstandings and suspicions that are not warranted by the facts.

[From the Washington (D.C.) Star, Dec. 11, 1959]

EXCESSIVE DRUG PRICES?

It may be possible to argue, as the president of one major drug firm has done, that public concern over the high cost of drugs reflects "a matter of inadequate income rather than excessive prices." For the most part, however, we suspect that the public will take this remarkable statement with a large grain of salt, and feel considerable gratitude in the meantime that the practices of drug pricing have come under intensive scrutiny by the Congress.

Standing alone, of course, the substantial public dissatisfaction which has been voiced about the costs of medicines and drugs is not conclusive of anything. For buying drugs is something like going to the doctor—there is little choice in the matter, and the outcome too often is shrouded in frustrating mystery. Most drugs, for example, are ordered through prescriptions, which are made no more intelligible by the druggist. The buyer, in most cases, has little notion of what the drug is, where it came from, or whether the charge is fair. It is precisely this helplessness, however, which makes the sale of drugs so susceptible to profiteering, and which requires that every safeguard be established to lessen the burden on the sick and infirm to the greatest degree possible.

Prospects are that the Senate Antitrust and Monopoly Subcommittee hearings will extend into next spring—and possibly the summer—and may branch into the pricing policies affecting costs of medicine at all levels. We hope they do. In the meantime, too few facts have been developed at the initial hearings to make precise judgments on the sensational differences disclosed between production costs and sales prices of some of the newer miracle drugs. Markups of 7,000 percent seem fantastic indeed, and annual profits appear to be far above those of comparable industries. Drug officials, on the other hand, contend that the subcommittee has failed to give consideration to the losses on drug failures and the tremendous costs of research and development.

The manner in which these costs are passed along, no matter how great they are, however, is very much the business of the public, and Chairman KEFAUVER, in probing the competitive and contractual aspects of the drug industry, is right in placing foremost emphasis on whether the manufacturers are setting their prices at excessive levels.

[From the Syracuse (N.Y.) Herald-Journal, Dec. 9, 1959]

THE DRUG PROBE

(By Alexander F. Jones)

The Senate subcommittee starts its investigation of drug prices with a case where a company made a 7,000 percent profit on a French pill.

Other drugs were named where markups as high as 1,118 percent were noted.

The president of one drug company—Francis C. Brown of the Schering Corp.—strenuously defended drug prices with the contention costly research that often results in failure must be paid for by the consumer on new drugs that are proven successes.

Now it may be that I am completely naive, but it seems to me I remember many cases where new discoveries and inventions brought prices of commodities down in a hurry and the industries involved depended on added volume caused by lower prices for their profit.

The testimony of Mr. Brown left no doubt that the drug industry operates on a basis where outrageous prices are charged for any successful new drug so research can have funds in the search for others.

It may be that research costs are stirred in when other industries set prices. But I know several corporations that take research out of total income before measuring net profit.

They do not penalize the consumer by charging extortion prices to make up for failures.

The result of this policy is that millions of people, many of them old, sick, crippled, and ill-prepared for extortionate prices are forced to extreme measures to get money to pay for medicine.

For 14 months straight the cost of living index advanced without any recession and one of the items that was always greater was the cost of medical care.

The items involved in the advance of medical care costs are hospital and nursing charges, doctors fees, and drug costs.

Of the three the worst gouging of the public has come from drug costs.

It is true that amazing progress has been made in evolving new drugs that are successfully controlling many ailments of mankind.

The Senate subcommittee has been investigating for some time, convinced it can prove the big drug companies are taking advantage of the natural interest in advances in the struggle against disease.

It is armed with charts showing the big companies are acting as one in charging for certain drugs, while smaller independent companies furnish the same thing at a fraction of the price.

Whatever the truth about the existence of an undercover drug trust that is bilking the public by claiming research takes its extortionately high prices, the fact remains that uncounted thousands of American citizens cannot afford whatever healing qualities the remedies may have.

There is something present in this drug investigation that other probes do not have—here we are dealing with saving lives or losing them because of corporate greed.

No pill that costs a few cents to make is worth 50 cents over the drug counter.

And when you think that a man may die for lack of it because he cannot afford to purchase the drug regularly and is too proud to go on public welfare, it is not a pretty picture.

If there is one thing that the people of this country should be assured of it is reasonably priced health services.

Yet these services continue to skyrocket in cost.

And the medical profession, the hospital authorities, and the giant drug firms combined continue to register horror at the thought socialized medicine is a possibility in the United States.

Everything that is happening in the cost of being sick is leading us closer to it.

Low cost medical care under socialized medicine in Great Britain is such a success not even the most conservative government dares to oppose it.

And to top it off, the cold figures show profits in the drug industry are twice what they are in general industry.

It is to be hoped the Kefauver committee pulls no punches in getting the cost-of-drugs story before our people in every detail.

[From the Wheeling (W. Va.) News-Register, Dec. 8, 1959]

THE DRUG PROBE

Hearings have been opened in a congressional inquiry which could prove of inestimable value to the American people. It is the Senate Antitrust and Monopoly Subcommittee investigation of drug prices, a probe which has been in course of preparation for weeks.

In the capable hands of Senator ESTES KEFAUVER, Democrat, of Tennessee, who already has won national recognition for his ability as an investigator, this inquiry should succeed in presenting, for the information of the American people and the possible action of Congress, an accurate picture of the drug price structure—a definite answer to the question of whether or not the American people are being overcharged for drugs.

The fact that most drug prices are high, those of the so-called miracle drugs in particular, and the further fact that paying these prices imposes a severe financial burden on countless families, do not of themselves support the popular belief that the people are being gouged by the pharmaceutical industry. It is to be borne in mind that spectacular progress has been made in the conquest of disease through the efforts of private researchers in the field of medicine. The drug manufacturers have participated prominently in this enterprise, spending large sums of money to advance the work and develop the remedies. Their contribution to the preservation of life and the promotion of health has been very great. They are entitled to reasonable rewards of their enterprise. But the word "reasonable" controls. Do current prices for many of the preparations which the American people have come to use in large quantities justify the designation "reasonable," or are they excessive? That is the question the Kefauver committee will undertake to answer. Already there are some disturbing features of the drug price structure pressing for explanation—for example, the disparity between domestic and foreign prices of preparations produced by the same manufacturer. Senator GEORGE A. SMATHERS, Democrat, of Florida, a member of the Kefauver committee, cites these examples: Vitamin B–12 tablets that retail for $2.63 per hundred in Venezuela but cost $4.88 here, tranquilizer tablets which can be bought at the rate of 50 for 46 cents in Argentina but command from $3.85 to $4.25 for the same amount in the United States, or migrane headache tablets which sell for $14 a hundred in this country yet can be bought for half that price in England.

There may be valid explanations for these differentials. The prices paid by the American people for drugs may be reasonable. On the other hand, many may be far out of line. Whatever the facts, the Kefauver committee should be able to establish them, thus either paving the way for corrective action or settling the minds of the American people, most of whom now believe they are being taken advantage of. In fairness to all concerned, the investigation should be made a searching one.

[From the Sacramento (Calif.) Bee, Dec. 8, 1959]

WHAT AVAIL WONDER DRUGS IF PRICE IS TOO HIGH?

Perhaps no congressional probe of the last several years will win more public acclaim than the investigation undertaken in Washington, D.C., into the high price of drugs.

Great strides have been made in the last decade and a half in the development of drugs which will relieve human ailments ranging from the common cold to arthritis and pneumonia.

But in many instances the prices are so fantastically high as to be out of reach of most people, particularly in cases where the drugs must be taken over the course of years if not for a lifetime.

What the U.S. Senate Antitrust and Monopoly Subcommittee, headed by Senator ESTES KEFAUVER, of Tennessee, will try to find out by the hearings is whether the prices can be justified or if they are set artificially

to return huge profits to the drug manufacturing concerns.

If the latter proves to be the case, and the subcommittee has many complaints to that effect, it constitutes unconscionable trafficking upon human ills and miseries.

The committee has taken note of the fact that when competitive products are placed on the market the prices generally drop dramatically. In the case of penicillin, for instance, when the drug first was marketed the price was $20 for a given quantity. Four years later it was 30 cents.

Drugs manufactured in the United States can be bought for much less abroad than at home. Tranquilizer pills which cost from 7½ to 8½ cents each in this country can be purchased for 1 cent in Argentina.

Nor has it escaped the subcommittee's notice that the net profits of drug concerns are much higher than for industry in general.

Certainly the public should be able to get these new so-called wonder drugs at the lowest prices possible. Advances and discoveries in the medical sciences should be made available to the masses.

Profiteering, if it exists, simply gives impetus to the demand for some form of public medicine.

[From the St. Louis (Mo.) Globe-Democrat, Dec. 10, 1959]

HOW MUCH FOR DRUGS?

Washington's investigation of the prices that pharmaceutical firms charge for the medicines they sell hit the headlines with the first day's hearing. It looks as if this Senate subcommittee probe will stay in the news as long as the inquiry continues.

Nothing, not even the price of medical services and hospital care, is more important to Americans than the price they pay for a prescription at the drugstore. Unlike TV sets, autos, or other comforts, and conveniences the average American can take or leave alone, medicine is usually an essential item in his budget.

When the cost of drugs and prescription items goes up, the consumer can't simply forego them, or buy a cheaper model.

For that reason, what pharmaceutical firms charge for their product has a far greater impact than the price charged for a pair of pants or a pound of bananas.

Are the drugmakers charging too much?

The Senate subcommittee showed that one of the drug firms bought a drug called prednisolone from the manufacturer, bottled it and sold it under the name neticortelone.

The drug cost the company the equivalent of $1.60 for a bottle of 100 tablets, which the company sold for $17.90 a bottle, and urged the druggist to sell for $29.80 a bottle. Oddly enough, two other firms that marketed the same drug charged the druggist the same $17.90 a bottle, too.

The firm also bought medicine marketed as progynon for 11.7 cents a batch and resold it to druggists for $8.40.

Is this too much? And, it might be asked, is the identical price that three pharmaceutical firms charged for the same medicine just a coincidence? If it is the result of collusion, who's enforcing the antitrust act these days?

The head of the drug firm who was on the spot tried to squirm off it by saying that research costs are high. Also, he said, it takes money to test, "tabletize," and push these products.

Pharmaceutical firms do invest plenty in research. At least some of them do. They know that coming up with a new wonder drug is like hitting the jackpot. A top-notch, patentable antibiotic has been worth up to $60 million a year in sales to the firm that hit on it.

These new cures or pain killers are not only profitable for the discoverer, but also a boon to the public.

At the same time, research is costly. The firm that gave the world aureomycin spent $4 million before it had the drug down pat. And, of course, some money goes down the drain for projects that don't pay off.

Up to a few years ago, researchers had turned up about 300 antibiotics. Fewer than 20 of them made the grade as salable prescription items.

But granting all that, the question asked by Senator ALEXANDER WILEY, Wisconsin Republican, seemed very apropos. He said he wanted to know whether drug companies are conspiring, or getting together, and as a result, giving the public a rigging.

Senator WILEY charged the subcommittee exceeded its authority when it probed into a firm's profits.

However, he said, there is "something of a moral responsibility in the hands of an individual or a group, who claim they have a remedy, to see that the poor and needy are not taken for a ride."

The drug firm official on the witness stand argued that if some people can't afford drugs they need, the trouble is that their income is too low—not that drug prices are too high.

Anyway, he said, "unlike consumer marketing, (the firm) cannot expand its markets by lowering prices." The implication is that its market is limited—and it may as well charge all that the traffic can bear.

Any medicine maker who gets up in Washington will have to do better than that to convince the public that his prices are fair—and set by true competitive conditions.

[From the Richmond (Va.) Times-Dispatch, Nov. 29, 1959]

THE HIGH COST OF DRUGS

Wonder drugs don't get that name from the fact that many patients wonder how they can afford them. But the cost of today's prescription medicines is of great concern to persons of low or average incomes.

People who've had to pay what they consider big prices for drugs in recent years will be watching with more than passing interest the hearings to be held by a Senate group beginning December 7.

The Judiciary Committee's Antitrust and Monopoly Subcommittee will look into pricing practices of drug manufacturers. Are profit margins exorbitant? Is there collusion on price fixing between manufacturers? Does the industry spend too much for promotion? They're some of the questions the committee will be concerned with.

Wide interest in this whole subject may be taken for granted. Americans forked over money for 655 million prescriptions in 1958. American Druggist puts the current average cost of prescriptions at $3.10, but of course the figure is far higher for some of the so-called miracle drugs and for other medicines which are new on the market.

Twenty years ago the average prescription cost was $1.11. The drug industry says the 20-year increase is reasonable in view of (1) general inflation, and (2) the fact that many newer drugs shorten the duration of illness or cure illnesses which formerly were likely to be disabling or fatal.

There is no denying the fact that pharmaceutical production is a great gamble. Manufacturers spend huge sums in research to develop new drugs which may or may not prove effective. Or even if a manufacturer is developing a useful new drug, a competitor may hit the market with it first.

The new drugs pour out in a tremendous flood—500 of them in 1958. Some—like the first oral medicine for diabetes, Upjohn's Orinase, developed in 1957—may hit the jackpot. But, according to one estimate, 85 or 90 of every 100 new drug products introduced are economic failures.

Much of the industry's promotion is done through about 15,000 detail men. These representatives visit doctors and drug stores to promote their particular company's products. It is estimated that each visit to a doctor costs $9 or $10, and detailing a drug store for a year costs the industry as a whole about $4,000.

The Nation's 200,000 doctors are flooded with mailed circulars and samples. The New Jersey Medical Society's president believes drug prices could be cut if this circularizing were eliminated.

It is to be hoped that the Senate hearings will throw light on the question whether drug costs can be reduced, and, if so, how.

[From the St. Paul (Minn.) Pioneer Press, Dec. 24, 1959]

DRUG PROBE SHOULD REMAIN IN THE OPEN

One of the first things the Kefauver subcommittee studying drug industry pricing policies will have to do when it returns to work in January is to determine whether to conduct further hearings in public or behind closed doors.

Undoubtedly there will be some pressure for holding executive sessions. Several Washington columnists have suggested some attempts will be made along these lines, if not by subcommittee members, then by representatives of the industry.

Such attempts should be resisted in the public interest. Serious questions already have been raised in the sessions held to date regarding wholesale prices of drugs and medicines and what items should be included in determining the ultimate cost of specific products. Raised in the full view of the public, these questions should be answered in the same manner.

[From the San Bernardino (Calif.) Sun, Dec. 17, 1959]

COST OF DRUGS

Those who must pay for prescription drugs are reading with great concern the revelations made before a Senate investigating committee.

The Government's witnesses are charging that the markup on the prices of drugs fixed by the manufacturers is a bewildering percentage. No such charge is made against the retailers.

The drug companies deny the percentages and declare the high prices are necessary in order to finance research that produces the so-called miracle drugs.

With the testimony at hand it is difficult for most of the public to reach an opinion.

Senator ESTES KEFAUVER faces a great responsibility. However, the country has trusted him before and has a right to trust him to again point the way toward the proper answer. The public may have forgotten but it was Senator KEFAUVER who pointed the finger at corruption in Government. He aroused the Nation to the necessity for the people to be alert at every level of government.

Under the free enterprise system, competition is supposed to take care of unjustified prices in any line of business. It remains to be seen whether competition has been stifled in the wholesale drug field. The American people want the free American enterprise system to continue; they likewise want the drug manufacturers to continue their very important research. But they will insist upon a careful examination of the prices that have been charged and the high percentage markups.

The American people owe the drug industry a great debt of gratitude for its successful work in research. Nevertheless, that industry must now demonstrate it did not abuse this display of gratitude to gouge the very people who have been hailing the scientific discoveries.

We think we can safely rely upon Senator KEFAUVER, as one of the great leaders of the U.S. Senate, to see to it that the public is properly informed and correctly guided in its decision.

[From the Norfolk (Va.) Virginian-Pilot, Dec. 9, 1959]

THE WONDER DRUGS: PROFIT AND COSTS

The Senate Judiciary subcommittee investigating wholesale drug prices has begun by unearthing some troubling figures. Taken by themselves the figures tell us that our system of producing and marketing new drugs is expensive—in some cases prohibitively expensive. There is a danger that in the rush to blame someone for what is happening, overall perspective will suffer.

The committee is dealing presently with only one phase of the production and marketing of drugs—sales at the wholesale level. It is not studying retail prices. It is not studying, specifically, the cost of producing all drugs—which includes the cost of producing failures. It is not attacking, or has not attacked so far, the larger problem of whether the American public is getting its money's worth through a high-cost, high-production, high-competition research system.

Consequently, any judgments must be tempered by the realization that figures out of context can be misleading. This is what Francis C. Brown, president of Schering Corp., has been telling the committee's chairman, Senator ESTES KEFAUVER.

But it is necessary to examine closely the committee's bill of particulars. In one spectacular instance, the committee has said that Schering realized profits from a markup of 7,079 percent on a drug. This drug, marketed as progynon, was purchased by Schering from a French company for 11.7 cents (60 tablets) and resold to druggists for $8.40. The suggested retail price was $14, an astronomical markup from the original purchase price. The subcommittee conceded that the figures did not include the cost of tableting, bottling, and selling the product.

In attempting to defend this and other similarly profitable transactions, Mr. Brown furnished a major clue to what has happened. His company was engaged in an overall operation, he said, and costs for individual products cannot be isolated. In other words, a successful product was paying for a good deal of unproductive work in other fields. It is an argument that returns the question to the central issue of whether the system itself is productive enough to justify the costs.

But it is not an argument that clears Schering of the need to answer further questions. Mr. Brown did not deny that Schering more than made up for a $29 million purchase price in its first 5 years of operating the business purchased from the Government in 1952.

To Senator KEFAUVER'S query about whether the company might not have recouped its purchase price more gradually as a "matter of public policy," Mr. Brown replied, rather lamely, that the company was "sitting on a development which we could not regulate." His defense of Schering's pricing system on the ground that the medical profession accepted it is hardly more convincing. Most doctors were hardly in a position to challenge the system, since they were not in possession of the company's profit and cost figure.

There are questions which remain to be answered by the industry at large. Why are tranquilizers manufactured in the United States and sold here for 8 cents available in Argentina for less than a penny? Is it proper that drugstores in some cities sell drugs at prices considerably below those in other cities?

The answers to these questions should keep the subcommittee busy for some time to come. Soon or late, they should lead to a full and frank discussion of the way the system works. Drugs may mean life or death. They ought not to raise the question of whether some people can afford them.

[From the Anniston (Ala.) Star, Dec. 22, 1959]

DRUG INDUSTRY PROBED

Public concern over drug prices is reflected in the Senate Antitrust and Monopoly Subcommittee's current inquiry into pricing policies of major firms in the industry.

Indeed, the Federal Trade Commission more than a year ago leveled formal charges of illegal price fixing against six large pharmaceutical houses.

Giving especial timeliness to the probe is the proliferation of so-called wonder drugs on which practicing physicians have come increasingly to rely as specific remedies for particular ailments.

More often than not, the remedy prescribed today is a patented, trade-name product which the pharmacist takes from a bottle on the shelf rather than compounds himself.

The patient has no choice but to pay the price charged or go without medication. And the price of the drug often is higher than the doctor's fee.

Whether the high price is justified, on the one hand by the costs of drug research and on the other by the supposedly superior curative powers of the medicine, or whether it is artificially maintained for profitmaking purposes, is the question.

It is true that certain unique features of the industry tend to keep prices up. Drug houses devote much of their time in developing and promoting new products, which take over the market for products whose development and promotion already have cost large sums.

Pharmaceutical production is a great gamble; individual manufacturers are in a continuing race to be the first to come upon and patent a new drug that will meet a pressing medical need.

The stakes in the race may run into millions of dollars—profits for the company that gets there first; losses or reduced profits for the company that gets there a little too late.

The boom in pharmaceuticals dates back to the perfecting of processes for producing commercial quantities of penicillin, first of the antibiotics, during World War II.

Since then, the medical world has received a succession of wonder drugs: the broad-spectrum antibiotics, antihistamines, steroids, tranquilizers, various painkillers, and countless others.

The drug industry has added between 300 and 400 new products each year for the last decade or longer: Upward of 500 new drugs were put out in 1958. It's strange, moreover, that certain of these medications have been revealed as selling across druggists' counters overseas for less than they're priced to domestic purchasers.

[From the Augusta (Ga.) Herald, Dec. 8, 1959]

IS COST OF CERTAIN DRUGS TOO STEEP? SENATE GROUP IS SEEKING TO FIND OUT

A vast majority of Americans doubtlessly frown on any idea that smacks of socialized medicine—and quite rightly so, we feel.

Still, as a research writer pointed out recently, one can hardly afford to get sick these days, particularly if the treatment involves certain high-priced drugs.

And that is why a U.S. Senate subcommittee, headed by Senator ESTES KEFAUVER who is armed with what Washington news analyists Robert S. Allen and Paul Scott call "some startling comparisons," is launching a drug price inquiry this week.

The comparisons have to do with the prices of drugs made and sold in the United States and the costs in other countries of the identical preparations manufactured by the same American firms.

For the fact, as shown in a survey made by a Government agency for KEFAUVER'S antitrust investigators, is that some of the drugs, such as antibiotics, tranquilizers, and antipolio serum are being sold abroad for considerably less than in this country, despite the extra cost of exporting them.

For example, 50 tablets of a certain tranquilizer which sell for $3.85 to $4.85 in the United States costs only 46 cents in Argentina; a bottle of 100 vitamin tablets that sells for $2.65 in Venezuela costs $4.88 here, and a certain antibiotic for which Americans pay $6 costs only $4 in France.

Other Government statistics show that the cost of medical care is the fastest-rising item in the national cost of living index. It is now 50 percent more expensive than it was in 1949.

Moreover, the figures disclose that profits of the drug industry, as a whole, have been more than twice the rate of earnings of industry in general.

It should be pointed out, however, that the development of wonder drugs is responsible, more or less for the steep increases in prices; and that, in addition to research, much money is spent for promotion.

Defenders of the present system, which is made possible by patenting of trade-name drugs, contend that the competitive phase obviously has contributed to the relief of suffering. And this, we think, is not to be denied. Still, as we see it, if the cost of medical care in general continues to rise, a strong demand for some sort of a socialized system is certain to ensue. There are the health insurance programs, to be sure. But the cost of adequate coverage also comes high.

We feel, therefore, that efforts to develop less expensive programs of this kind should be pushed.

A socialized medical system—such as Britain now has—is not the American way. Medical science undoubtedly would suffer, and the taxpayers would, of course, have to shoulder a much heavier load.

[From the New Orleans (La.) Times-Picayune, Dec. 13, 1959]

DRUG INQUIRY

The Senate antitrust subcommittee inquiry into the wholesale pricing practices on some commonly used drugs probably strikes a responsive chord in many places because, for one thing, the cost of medicine and medical care have been a persistent factor in the continuing advance of the consumers' cost-of-living index.

These rising costs, of course, are attributable to many causes, including the urge for more and better medical care, and the struggle of hospitals to provide facilities.

So far, the Senate committee has concerned itself mostly with testimony on the pricing policies and licensing arrangements for a few drugs, such as the antiarthritis remedies—the corticosteroids known as prednisone and prednisolone—which the committee investigators contend have been priced excessively to druggists and consumers.

A large pharmaceutical company developed the arthritis drugs 5 years ago. The committee contention, apparently not denied outright, is that prednisolone costs $1.57 a bottle of 100 to produce which, with research, selling, and distributing costs added, mounts up to $8.81 a bottle. The wholesale price to druggists, according to the testimony, is $17.90, and the suggested retail price to consumers $29.83.

The developing manufacturer licensed five other large companies to produce and market the drug with the restrictive provision that they refrain from bulk sales and market

only in tablet form. All of these manufacturers, investigators testified, maintain identical prices.

A spokesman for the developing company denied that the prices were excessive and said the products must bear the overall cost of research. He said his company has just dropped a project that cost it $1,500,000 to $2 million. The right of his company to limit those licensed to produce the drug, he indicated, would be a matter for the courts.

If the committee wishes to get the whole picture of drug pricing, we surmise, it will have to inquire over a wider field than that represented by the large manufacturers.

In some instances, State laws contribute to the condition the committee complains about. A Louisiana drug act can be cited. It happens that several small manufacturers produce the antiarthritis drugs and, perhaps because of the unsettled patent question, have been selling it at one-third to one-half of the wholesale price charged by the licensed group. Either by purchasing from the small producers or getting large discounts from others, some Louisiana druggists have been able to sell the arthritis remedies at approximately half the suggested retail price of $29.83.

But under the law passed in Louisiana 4 years back, a druggist cannot advertise or even post prices on prescription or compounded drugs. Thus large numbers of consumers have been prevented from knowing that a standard antiarthritis drug was available to them except at prices that many cannot afford.

It seems to us that in the struggle against socialization of everything, including medicine, laws and conditions that operate to impair or embarrass the free enterprise system should be kept under scrutiny.

[From the Mobile (Ala.) Register, Dec. 12, 1959]

NOTHING TO LAUGH OFF IN THIS TESTIMONY

The testimony of Dr. Louis Lasagna at a Senate subcommittee hearing on drugs is nothing to laugh off.

Dr. Lasagna is head of the division of clinical pharmacology at Johns Hopkins University.

What he said is so serious in its relation to the public health that the people have a right to ask the medical profession, and particularly the American Medical Association and the various regional, State, and local medical societies, to take appropriate recognition of it.

As the Associated Press summed up his testimony, Dr. Lasagna "told Senate investigators * * * many new drugs are of miserable quality and may harm the patients with serious side effects."

That is a genuinely serious statement.

Is the American Medical Association prepared to disprove it?

The people of this country have a right to know—and to know in no uncertain terms.

An expression from the American Medical Association that limited itself to broad generalities could not be regarded as satisfactory.

This is a matter that concerns the people directly and vitally. They deserve to know what's what, absolutely, unequivocally, and conclusively.

The U.S. Public Health Service, which, as its name denotes, is concerned with the public health in this country, ought not to stand aloof in the face of Dr. Lasagna's testimony on this question of drugs.

This Federal agency is operated with tax money to serve the people's interests where health is concerned. Aloofness in the face of the testimony of Dr. Lasagna of Johns Hopkins University would be disappointing.

One of the greatest domestic misfortunes that could happen to the American people is socialized medicine.

The Mobile Register has been the foremost newspaper in the United States in warning that socialized medicine would be disastrous. No other daily newspaper, large, small, or medium size, has equaled the Register, or even come close to it, in editorially emphasizing the necessity of avoiding that disaster.

The Register is exceedingly proud of this record, a record that is beyond refutation by any source.

Although they have kept somewhat under wraps lately, the would-be socializers of medicine have not vanished. Any situation that may disturb the public mind under the existing traditional system gives encouragement to the would-be socializers.

If anything connected with drugs calls for correction, the correction should be made at once and to the full extent needed.

[From the Beaver (Pa.) Beaver Valley Times, Dec. 11, 1959]

DRUG PRICES UNDER FIRE IN SENATE INQUIRY

Caught in the vicelike grip of the creeping inflation that increases the prices of everything they buy, a great many Americans are finding it difficult, if not wholly impossible, to buy the drugs they need to ease their aches and pains.

Most Beaver Countians have long complained that drug prices are too high. For the most part, they have generally placed the blame on druggists. But hearings being conducted in Washington by Senator ESTES KEFAUVER'S Antimonopoly Subcommittee indicate that it is not the druggists who are to blame, but the drug manufacturers.

Letters received from the committee, principally from elderly people and others who live on a small pension or other fixed income, have revealed that many Americans are depriving themselves of food and other necessities so that they can buy urgently needed drugs. Many others are not getting the drugs they need because, they say, they cannot afford to buy them. Even some druggists have complained to the committee that wholesale prices charged by certain pharmaceutical companies are unreasonable.

According to testimony before the committee, there is a wide disparity between the prices charged for the same drugs in the United States and in other countries, although the same manufacturer produces them. In other testimony, some pharmaceutical firms were charged with markups of as high as 7,000 percent. But the manufacturers have vehemently denied these charges.

Hardest hit by the high cost of drugs, whether fairly priced or not, are the aged, the infirm and the sick with average or low incomes. Many of them suffer from chronic illnesses which require regular and heavy expenditures for drugs.

If, as they claim, they are paying outrageous prices for the drugs they so urgently need, they deserve relief.

DRUG PROFITEERING: TIME TO CRACK DOWN

American industry and business are based on the theory of the profit motive as a healthful force in developing our productive capacity and making us a strong and dynamic nation.

No one seriously challenges this theory except those who adhere to socialistic ideas of one degree or another, and they have never yet become a serious threat to the survival of profit economy in this country.

But there has always been a threat from those profit-takers who are immoderate in their demands, and who attain, from time to time, a degree of control in their fields which permits them to dictate what the public shall pay for their products, regardless of the so-called law of supply and demand. The threat, in such cases, takes the form of government action to break up monopolies, or to control prices of items essential to public health, safety or national welfare.

The revelations in the current sessions of the Kefauver Senate subcommittee point up a profiteering condition in the drug manufacturing and wholesaling industry which calls for remedial action.

Corporation arguments that research expenses require a substantial markup of prices over production costs are valid—up to a point.

They cannot possibly excuse the practice of selling to arthritis sufferers a pill which costs 1.6 cents to produce, for a wholesale price of 17.9 cents and a retail price of 29.8 cents.

They cannot excuse a 7,000 per cent profit on a "female disorder" remedy, bought from a French firm at 12 cents a bottle of 60 tablets, sold to druggists at $8.40 a bottle and to retail customers at $14.

They cannot excuse the price spread of another product, from a production cost of 28 cents for 100 tablets, to a wholesale price of $8 and a retail price of $13.35.

They cannot excuse the uniform pricing of the arthritis wonder drug at a high level by four major drug companies, while several smaller firms can offer it to retailers at about one-fourth of this price.

Charging as much as the traffic will bear for nonessential luxury items may be justified, but charging suffering humanity exorbitant prices for scientific discoveries that can ease their pain and perhaps restore them to productive life is socially and morally indefensible.

Americans willingly give millions of dollars to nonprofit organizations, foundations and institutes to carry on research projects which are expected to benefit the human race. Thousands of scientists dedicate their lives to such research, expecting in return only reasonable salaries and security for their families, and such satisfaction as comes from extending the boundaries of human knowledge.

It is incongruous to find, in the manufacturing and marketing of the products of medical research, an attitude of greed and callousness toward the ill and needy.

One witness' assertion that "the problem concerns inadequate income rather than excessive prices" would be laughable if it were not tragic. It suggests that the drug industry expects to serve only the well-to-do and wealthy, and has no intention of making its products available to the great majority of Americans.

The Kefauver committee will do a major service to the country if it brings the big companies sharply to a realization of their social responsibility—either by legislation, antitrust prosecution or moral suasion.

The price problem extends beyond the drug industry, of course. Last summer the publisher of the News-Press bought an electric razor in Germany for $11—a razor made in the United States and shipped overseas. In this country, the same razor retails for $34.

If anything is driving the United States toward socialism, it is the irresponsibility of a few businessmen under the free enterprise system.

PROFITEERING

Senate investigators appear to have brought to light exceedingly disturbing practices within the ethical drug industry. They present, already, a strong case indicating (1) profiteering pricing and (2) conspiracy to maintain those prices.

In one instance, drugs bought for 11.7 cents were sold to drugstores for $8.40. Another, in amounts costing 28 cents, was wholesaled to druggists at $8, retailed to the public at $14. An arthritis-asthma tablet derived from cortisone was made by the drug manufacturer for 1.6 cents, was wholesaled

at 17.9 cents and retailed at the suggested "fair trade" price of 29.8 cents. That is $29.80 per hundred.

Moreover, charts produced by Senator KEFAUVER and his committee showed that four of the great ethical drug companies sold the cortisone preparation, prednisolone, at the same prices to the penny, wholesale; $17.90 for a bottle of 100 tablets.

Pinned down, one drug company president pleaded the costs of research. He seemed to challenge the figures but when advised that they came from his own company, disdainfully and defiantly declared, "Then they speak for themselves." He gave the impression to at least one observer that he was challenging the committee on a "What are you going to do about it?" basis.

It is a good question. What is Congress going to do about it? Do too many influential people, including some Members of Congress, hold so much stock in ethical drugs that the companies are untouchable? Is that condition rather prevalent with respect to large industry in the United States?

Have the antitrust laws gone by the board thanks to cartels, trade associations and understanding, "fair trade" and other devices now not only familiar but threatening to become integral parts of the American economy; to the detriment of free enterprise and that whole economy?

[From the Atlanta (Ga.) Journal, Dec. 8, 1959]

THE DRUG MARKUPS

The current investigation before the Senate Antitrust and Monopoly Subcommittee is producing evidence of incredibly high markups in wonder drug prices. Consider the testimony admitted in the first day's hearing:

Schering Drug Co. produces an arthritic wonder drug at a cost of $1.57 a hundred. It sells the drug to the retailer for $17.90 a hundred. Its suggested list price to the customer is $29.83 a hundred.

Granted that the pharmaceutical firm does not enjoy a similar markup from all its products. Granted that the difference between cost and price must be great enough to pay for the staggering cost of drug research, a burden which the companies have assumed. Granted that the Nation's drug companies have produced an amazing list of discoveries that have advanced the frontiers of medicine at an incredible rate and reduced the suffering of millions. Granted that the successful discoveries must be priced to pay the cost of research that ends in blind alleys.

Markups of 1,000 percent and more still seem totally unjustified. The burden of proof is on the drug producers.

Then there are reports that certain producers are openly hostile to a retailer that reduces his own markup below that suggested by the company. One pharmaceutical house reportedly stopped deliveries to a retail firm that lowered its prices to customers below the manufacturer's suggestion.

There may be reasonable explanations for such practices. We are willing to listen to them. But meanwhile we must conclude that the Senate subcommittee is justified in investigating charges of monopolistic price fixing.

[From the Watertown (N.Y.) Times, Dec. 8, 1959]

DRUG MARKUPS

Senate investigators continue to seek fuller explanation from the major drug companies relative to their pricing policies and the huge markups on many of the new so-called wonder drugs. They want to know why price markups range from 1,118 percent to more than 7,000 percent on some medical products.

For example, three big drug companies which handle "miracle drugs" sell a product for 17.9 cents a tablet to druggists, who in turn charge their customers 29.8 cents. And the basic cost of the tablet is about 2 cents. One of these drugs is prednisone and the other prednisolone—both used in the treatment of arthritis.

In another instance it was shown that a company paid 11.7 cents for the drug used in 60 tablets of progynon and sold these to druggists for $8.40 with a suggested retail price of $14. It listed 28 cents as the price paid for another drug in 100 tablets with a wholesale price of $8 and a suggested price to the patient of $13.25.

The Senate subcommittee chairman, ESTES KEFAUVER, questions whether such prices are reasonable and fair to persons who need drugs.

So, also, does the public question these tremendous markups. And the public is aware of these costs in more ways than one. An individual who has to buy expensive drugs knows what it is costing him out of his own pocketbook—where he can see his money disappear. Then he wonders how much it is costing him, indirectly, as a taxpayer, realizing full well that his city or county welfare department must pass out similar sums to take care of those welfare clients who must receive medical treatment.

There are those, of course, who will shrug the matter off by saying the entire situation has been developed by politicians trying to make a name for themselves. They will say it has been blown up out of proportion. But patients who must pay these high prices for drugs do not think along those lines. They are fully aware of the price, and have been waiting for someone to launch an investigation.

Others approach the problem from an entirely different viewpoint. They will concede that higher prices may be necessary to help cover the costs of research programs and other expenses in the development of these new drugs.

However, they wind up by asking this question: Should the cost of research be tacked on to the price of one or two drugs for which it was spent; or should the cost be spread out over all drugs to take the load off one or two? In other words, should such drugs as aspirin, cold pills, throat tablets and others be increased in price to help pay for development of the "miracle drugs"? Those who take a lot of aspirin will say no—they do not feel they should help pay for something else. Those who must depend solely on the "wonder drugs" naturally would like others to help out on the cost of research.

We do not profess to know the answer or have a solution. Pharmaceutical research must continue. Without some of the newer drugs developed in recent years many of us would not be alive today. However, it appears the time has come for some agency to be authorized to make extensive surveys and studies into the costs of drug production and pricing policies. Production costs and cost to the patient should be brought closer together. Markups ranging from 1,000 to 7,000 percent seem more than a little out of reason.

[From the Hartford (Conn.) Courant, Dec. 10, 1959]

ARE DRUG PRICES UNFAIRLY HIGH?

The current investigation of drug prices by a Senate subcommittee has been foreshadowed for a long time. Senator ESTES KEFAUVER, who heads the Judiciary Committee's Antitrust and Monopoly Subcommittee, said some time ago that in the 2 years his group has been studying pricing practices it had received more complaints about the high price of drugs than about all other products put together.

It must be said that the subcommittee has already presented a strong prima facie case in its initial hearing, which produced evidence of price markups as high as 7,000 percent. In defense of these tremendous markups the head of one company told of the tremendous investments his and other companies make in medical research, for which there is no return whatever. He cited an antiarthritic project that had cost nearly $2 million for which there was no return whatever.

It is a fact that the drug manufacturers of this country have done a magnificent job of both research and production in everything from penicillin to estrogen-hormone drugs, for which there was a 7,000 percent markup. But other attempts to pin price fixing on the drug makers have failed. Only last month a Federal judge in New Jersey dismissed price-fixing charges against five manufacturers of Salk polio vaccine

In addition to the Kefauver investigation, which will lead into retail drug pricing, the manufacturers face another hazard. The Federal Trade Commission has also filed a complaint in New York on charges of illegal price fixing on broad-spectrum antibiotics. These drugs are effective against a wide range of micro-organisms causing infection and disease. After a 2-year study the FTC charges that six companies had tried to monopolize the market for Tetracycline and like antibiotics, whose sales amount to millions a year.

It probably will be possible to reconcile the charges of the Kefauver committee of high prices and those of the head of the Schering company alleging great expenditures for research. This latter company, purchased as alien property for $29 million, earned profits of $32 million after taxes in little better than 5 years. That profit margin may explain why your tranquilizer pills cost you nearly a dime apiece, while the same thing in Argentina—though made in America—costs a penny.

If the Kefauver committee can discover why drugs manufactured in the United States can be sold abroad more cheaply than we can buy them in this country, then it will have performed a public service.

[From the Shreveport (La.) Times, Dec. 3, 1959]

GOVERNMENT PROBES DRUG MANUFACTURING

The cost of severe illness from the angle of doctors' bills and hospital fees, including nursing, has been under widespread public discussion for a number of years. Now it is being approached from another angle, and this time by the Federal Government—the cost of drugs for those who are sick.

At present a Senate Antitrust and Monopoly Subcommittee under Democratic Senator ESTES KEFAUVER, of Tennessee, is preparing to open hearings Monday on pricing practices of drug manufacturers. The Federal Trade Commission is pushing charges of illegal price fixing against six large pharmaceutical firms. Producers of Salk vaccine actually are in court on charges of conspiring to set uniform prices for the polio preventive.

An indication of the increase in both the cost and use of drugs is found in the sales figures of the drug industry. Sales of pharmaceuticals totaled $354 million in 1937 and $941 million in 1947. This year Federal estimates are that the total will be around $2,500 million, nearly eight times as much as in 1937.

Part of the high cost of drugs is due to the rapid development of antibiotics. Virtually all of them are expensive, a typical price being $8 for 16 pills, or 50 cents a pill. This probably has helped increase the average cost of a prescription to $3.10 now against $1.11 only 20 years ago, all figures being from Federal sources.

The sick person may be inclined to cuss out the family drugstore when he sees the cost of his prescription. But the Federal

agencies think that the blame, if there is blame, rests entirely with the pharmaceutical houses, the manufacturers of drugs. Usually the druggist is given a set price for most of the prescription products he sells today; and, where a prescription used to be mixed by the pharmacist under a doctor's orders, many prescriptions now are standardized and produced by the pharmaceutical manufacturers under patented trade names.

The patent system itself is looked on by the Kefauver committee, as a result of its preliminary inquiries, as one of the major causes of high prices of drugs. A certain patented treatment for physiological conditions which affect a tremendous number of people these days costs $5 for 100 units under its patented name. If bought simply under its generic name—the drug that forms the patented products—the cost would be about $1.45, according to Kefauver committee information.

On the other hand, the patenting of a drug product increases incentive of other pharmaceutical firms to laboratory research to find something better and get it on the market in competition with the patented product, according to representatives of the pharmaceutical industry. They contend that the seemingly endless run of new antibiotics, each presumably better than any previous one in its own field, is a result of this competition created by patents.

Once a patent is broken in any way—by production of a comparable or better product, or in some other manner—the price of the originally patented output usually descends quickly. Also, when a new drug comes out the price may be very high at the start but may decrease with increased facilities for production—providing both greater and more economical production.

The first of the present major antibiotics, penicillin, came out during War II and was not patented. At first, the cost was $20 for a 100,000-unit vial, and for a while this drug was available only to the Armed Forces. Between 1943 and the end of 1947 the price dropped from $20 for the 100,000-unit vial to 30 cents for the same amount. The new oral diabetic drugs cost only about half as much now as when first introduced.

The Kefauver committee investigators point not only to the tremendous increase in dollar volume in pharmaceutical sales in recent years but to what they claim to be high profits in the drug manufacturing industry. They say that the major drug manufacturers of the Nation received, as a whole, nearly 20 percent of all sales as profits before taxes in 1958, where the comparable rate for all types of manufacturing in the Nation was 7.4 percent. Pharmaceutical manufacturing profits after taxes, according to the committee's evidence, were 10 percent from January 1957 through January 1959 for drugs, and less than 4 percent for sales of all manufacturing.

[From the Little Rock (Ark.) Arkansas Gazette, Dec. 10, 1959]

A Proper Inquiry Into Drug Prices

Senate investigators looking into prices report a finding which many people have suspected all along: There is more popular dissatisfaction with drug prices than with the prices of any other class of commodity.

This situation is to a degree inherent in the drug business. Medicines are absolutely essential and there is not ordinarily any satisfactory alternative to buying them. If a price appears high, then it follows that the patient will complain to high heaven that the drug industry is exploiting the sick. He is not likely to be concerned with the sometimes giant spending for research to develop a product, or with the overhead attendant to any business. This is the cross which the drug manufacturer and the corner druggist alike must bear.

But the investigators of the Senate antitrust subcommittee have turned up some startling figures that stretch the limits of any reasonable explanation. Consider these two items among the charges made so far:

A major national firm paid a French company something less than 12 cents for the drug used in 60 tablets of a medicine called progynon, used in female disorders. It was then sold to druggists for $8.40 and the suggested retail price was $14. These figures were not disputed by a company spokesman who appeared at the Senate hearing, although he contended this drug was a relatively insignificant item.

A tranquilizer sold in this country for about 8 cents costs less than a penny in Argentina.

The committee also brought out a charge that the same company had a 1,118 percent markup on a medicine derived from the wonder drug cortisone and prescribed for arthritis and asthma. This was vehemently challenged by the company, which contends its return on this drug was 12.3 percent after all costs had been considered.

It remains to be determined just how broad are price abuses in the drug business. And in the instance of the cortisone derivative the merits of the argument are not completely clear. Proper caution, too, is needed in determining just what Federal remedies may be in order.

But the public may recall that the drug industry has been in the vanguard of the so-called Fair Trade legislation, which works to keep prices high on many commodities. Immediately, the early evidence on drug prices shows the Senate subcommittee has at least found a proper field for inquiry. It is axiomatic that the achievements of medicine must be severely circumscribed if drugs are priced so that some people, if they can buy them at all, pay for them only at a heavy sacrifice in other essentials.

[From the Pensacola (Fla.) Journal, Dec. 10 1959]

All Facts Should Be Bared in Drug Pricing Inquiry

While evidence so far presented is conflicting, Senator Kefauver and his committee investigators seem to have hit paydirt in their revelations of high markups of drugs by manufacturers.

Charts showing a markup as high as 70 times the cost of a drug and identical prices for 2 products by 3 manufacturing pharmaceutical houses indicates excessive profits and perhaps agreements on prices contrary to antitrust laws.

The figures produced by committee investigators have been attacked by drug firm executives as "distorted" and "grossly misconstrued" and the investigators have admitted that they do not take into account funds spent on research and promotion. Company officials also said that royalties, distribution costs, and taxes had been omitted which would bring the markup much lower.

No doubt these expenses, especially research, are costly, but it scarcely seems that they could run expenses up to the high amounts charged retailers and the prices suggested to retailers for sale to the consumers.

Moreover, the price of these new wonder drugs, eagerly sought by ailing persons, many of them of limited means, should drop after these original costs have been recaptured by the manufacturers, as one local druggist commented. The fact that some of the smaller drug houses can charge much less also should be taken into consideration.

The testimony lends substantiation to a statement made a few months ago by a Florida physician complaining of high markups on drugs purchased by the State for patients on public welfare.

The Senate committee should push its inquiry and lay all of the facts before the public and Congress so that necessary action can be taken to protect the public if there is profiteering or collusion.

[From the Harrisburg (Pa.) Patriot-News, Dec. 13, 1959]

A Look at Miracle Drugs and Miraculous Prices

If this is an age of miracles, it also is an age of revelation.

From the wonders of television and electronically piped music, the public searchlight now is turning to the wonder drugs.

The revelations, so far, may be less noisy and dramatic but they're at least significant.

What the Senate Antitrust Subcommittee has found up to now—and the hearings are expected to go on for some months yet—boils down to this:

Some of the new miracle drugs sell for as much as 70 times their production cost by the time they reach the patient.

A striking case in point of excessive markup by the drug companies is that of the Veterans' Administration which was paying $13.60 for one antiarthritic drug. After a while, the VA shopped around and, wonder of wonders, found that it could get the very same drug from another firm for $3.85.

But the evidence before the committee shows that millions of private patients weren't as fortunate as the VA. They have trustingly followed their doctors' prescriptions for drugs of certain brands and have been paying high prices.

There are many Americans who can well afford to pay top drug prices without question. There are also many Americans who cannot afford to do so and who are either ineligible or too proud to use public assistance. Such persons have gone without the drugs—at the expense of their health and well-being.

The committee claims it has documentary proof that no new drug is offered the public unless the manufacturer is assured of a profit four times his investment.

The ugly inference is that the public might conceivably be deprived of essential drugs at the will and whim of profiteers.

So far, the drug industry has failed to come up with a convincing justification for the skyrocketing drug prices.

The president of one drug company, Francis Brown of the Schering Corp., has defended high drug prices, contending that costly research that often results in failure must be carried by the consumer on new drugs that have proved successful. But that doesn't justify extortionist prices beyond the reach of many sick, crippled and aged Americans.

There is a strong suggestion that the big companies are squeezing smaller firms out of business—and out of competition.

Seymour Blackman, an executive of two small New Jersey firms, has charged flatly that the large pharmaceutical houses are gouging the public for at least $750 million a year.

"The consumer buying drugs," he asserted, "has no choice. He must buy the medicine (prescribed) and he has no choice as to the brand."

Nobody begrudges the drug manufacturers a fair and reasonable profit. They perform a vital service to the health of America and they can't be expected to do it just for the love of it. But, like every other industry under a free enterprise system, they are not exempt from the obligation to permit the free flow of competition to operate in creating prices.

The wonder drugs are wonderful. But it shouldn't take a miracle to be able to afford them.

[From the Monroe (La.) World, Dec. 10, 1959]

DRUG PRICE INQUIRY

A congressional investigation into big profits allegedly made by major drug manufacturing firms has been launched by the Senate Antitrust Committee, This inquiry will be watched with extraordinary interest by the public, since the cost of medicine has become one of the leading costs of every day living. Almost every person in the United States will be directly affected.

In addition to the Senate investigation headed by Senator ESTES KEFAUVER of Tennessee, chairman of the committee, the Federal Trade Commission is pushing charges of illegal pricefixing against six large pharmaceutical firms. Producers of Salk vaccine already are in court on charges of conspiring to set uniform prices for the polio preventive. The inquiries and charges center around the big drug manufacturers.

Figures in the drug industry show that pharmaceutical sales totaled $354 million in 1937 and $941 million in 1947. This year, Federal estimates are that total sales will be around $2,500 million—nearly eight times as much as in 1937.

There has been no comparable rise in other costs of living, although there have been big advances along virtually all lines.

The patent system is looked upon by the Kefauver committee, as a result of preliminary inquiries, as one of the major causes of high prices for drugs. A certain patented treatment for physiological conditions which affect a tremendous number of people costs $5 for 100 units under its patented name. If bought under its generic name, the cost would be about $1.45, according to Kefauver committee information.

Still worse, the Senate investigators accused a leading drug manufacturer of hiking the cost of a "female disorder" remedy more than 7,000 percent above its basic cost.

The Senate Antitrust Subcommittee produced evidence that the Schering Corp. of Bloomfield, N.J., bought the medicine, Estradiol, from a French drug firm at about 12 cents for a bottle of 60 tablets. These, in turn, were sold to U.S. druggists for $8.40 a bottle and to consumers for $14, according to John M. Blair, subcommittee economist.

Francis C. Brown, Schering president, did not dispute the figures but did contend they were "misleading and valueless" and a "headline" item.

It is difficult to understand Mr. Brown's statement, if the charges against the firm are true, since neither his firm nor any other American firm apparently spent any money developing this drug and therefore seemingly had no excuse for selling it at an extremely exorbitant price. Sometimes high prices may be justified when a firm has gone to great expense to develop a certain drug, but this appeared to be a clear case of a 7,000 percent profit between the original seller and the consumer, with no compensating scientific achievement by the drug manufacturing firm.

In an opening statement, Senator KEFAUVER said:

"I am appalled if precious drugs are not obtainable by citizens who need them to sustain their very lives."

He said most drugs clearly would fall within the definition of "administered prices."

Another drug was said to have cost 28 cents for 100 tablets and to have sold for $8 wholesale and $13.35 retail.

A wholesale price of 17.9 cents per pill for an antiarthritic drug that cost less than 2 cents was charged.

"There are more than 10 million people in the United States suffering from rheumatic diseases, 1 million of them permanently disabled," Senator KEFAUVER said. Many of the older people say their income consists of social benefits and that, after paying for drugs, they do not have enough to live on.

Drug manufacturers admit large profits on their products but contend this is necessary in order to carry on research.

Drug development in the last 25 years has outdistanced all previous advancements in the history of medicine and the manufacturers say this rapid advance followed immediately when industry and the medical joined hands in research.

An investigation of the type now underway seems proper, especially in view of the disclosures that have been made. There may be justification for high prices for some drugs but the public is entitled to know when such prices are justified.

[From the Corpus Christi (Tex.) Caller, Dec. 16, 1959]

"ALL THE TRAFFIC WILL BEAR" IS A DUBIOUS PRICE POLICY

Implicit in the current Senate Antimonopoly Subcommittee inquiry into wholesale drug pricing is this most painful question: Is the theory of "all the traffic will bear" a responsible criterion for private business in the United States?

Evidence already submitted to the subcommittee indicates that one manufacturer sold an arthritis wonder drug for $7.35 for 100 tablets in Britain while charging $17.90 in the United States. This same company realized profits of $120 million in 10 years on a beginning net worth of $40 million, making as much as 10,000 percent profit on one transaction alone.

Senator ESTES KEFAUVER, subcommittee chairman, and his associates apparently hope to bring the weight of public opinion to bear on the high cost of drugs. There is no indication that the subcommittee anticipates recommending legislation to set prices either at the wholesale or retail level.

But the question of drug costs becomes increasingly a matter of public interest. Longevity has brought its problems as well as its rewards. Old age often supports itself on wonder drugs that pensioners may not be able to afford.

Here as in other fields of the American economy, industries are to some extent on trial. A responsibility to the public exists in every manufacturer-consumer relationship. Ideally every manufacturer should be willing to share with the public the fruits of lower unit cost through increased output.

[From the New Kensington (Pa.) Dispatch, Dec. 16, 1959]

DRUG PRICES TOO HIGH

We do not feel overly sympathetic to Dr. E. G. Upjohn, president of the Upjohn Pharmaceutical House in his protests against unfair accusations made by Senate subcommittee investigators.

The investigators pointed out last week that the Upjohn firm was paying only 14 cents for raw materials in a sex hormone which it was selling for $15. Dr. Upjohn was loudly self-righteous for his firms, stating that raw materials were only a small part of the cost in production.

We agree with Dr. Upjohn's statement, but not to the degree that he is cheating the public, not to the tune of 10,000 percent difference in raw material and final sale prices.

The Senate investigators also pointed at the tremendous profits made by Upjohn, noting that in 4 years the firm showed sufficient profits to equal its approximate value at the beginning of those 4 years.

We approve of prosperity, but in this case we think the public is being robbed.

[From the Sherman (Tex.) Democrat, December 1959]

COST OF WONDER DRUGS

A wonder drug to combat arthritis was sold at 1,118 percent above the cost of the materials. Another used in the treatment of female ailments was marked up 7,079 percent. These were the wholesale prices charged by a major drug manufacturer to drugstores. Why? a Senate antitrust investigation wanted to know, and so do the people who are paying such inordinate prices.

Francis C. Brown, president of Schering Corp. of Bloomfield, N.J., told the committee the mark-up is not excessive because of the high cost of medical research. That and the services his concern renders to physicians, to introduce these drugs to them and instruct them in prescribing them, were added to the actual cost of the materials.

Senator ESTES KEFAUVER, chairman of the subcommittee, brought out some serious refutations. First, he showed that a small concern sells the same drugs at a fraction of the Schering price. Second, that the service to physicians is in fact a scheme to persuade them to prescribe the firm's trademarked products. Also, that when it competed for Government business on bids, Schering cut its price as much as 85 percent. Finally, that Schering was an alien property sold by the Government for $29,132,000 and in 5½ years, it had more than recouped its purchase price in profits of $31,959,000.

KEFAUVER seems to have hit paydirt in another investigation. The results, we hope, will be a way to enable the ordinary buyer to get his wonder drugs at a fair price, not to have to pay for the research and sales that build the firm and insure its future profits and dividends.

[From the Greensboro (N.C.) Record, December 8, 1959]

DRUGS ON THE MAT

Senator KEFAUVER's investigation into the price of drugs will get a warm endorsement of the bill-paying public.

The Tennessee Senator's political ambitions may be compounded in the prescription, but any light on the subject, for whatever reason focused, will be welcome.

That joke that the minimum price for a bottle of medicine is $5 turns out not to be exactly correct, but the truth is hard enough to hurt. The average price of a medical prescription pushed above $3 this year, up from $2.93 in 1957, according to estimates by the drug industry.

Government statistics estimate prescription prices have climbed more than 33 percent in the past 10 years, compared with 25 percent increase in the consumer price index as a whole. Over a fourth of what Americans spent on medical care last year—$16,400 million—went to pay for drugs and medical appliances.

Everybody agrees that the United States has wonderful pharmaceuticals, but the question is: Can the American people afford them?

Congressional investigators are expected to charge that this country's drug-making business is controlled by a handful of large firms which, by unspoken agreement, keep prices high. They will probably claim that there is little or no competition among drug makers.

The investigation will start with a probe into the price of drugs used to treat arthritis; then it will go into prices of synthetic hormones, tranquilizers, antibiotics, and medicines used against diabetes.

At a series of public hearings, executives from drug companies will have their inning. They can be expected to contend that the price of drugs is actually held down by

fierce competition. New drugs may be high at first, they answer, but prices drop fast on older products, Drug manufacturers also say that heavy packaging, advertising, and promotion costs and research keep prices of new medicine high.

Whatever the Senate subcommittee uncovers, the drug makers will find a new factor in the field of steroids, which bring relief to arthritics. Among scheduled witnesses Dr. Ethel Andrus, president of the American Association of Retired Persons, will tell about the association's own mail-order pharmacies to sell expensive cortisone derivatives.

This kind of evidence will be presented: A check with a purchasing agent of a retail drug chain shows their prices run about the same—five steroids are sold for $17.90 for 100 tablets, with a suggested retail list price of $29.83. This would be a month's supply.

Other targets for the Kefauver subcommittee will be the concentration of the drug industry—about 20 firms account for 80 percent of the market—and the industry's high profit margin.

Manufacturers feel that they can satisfactorily explain the high cost of drugs if they get a chance to tell their story.

They should have every opportunity. But they should realize that pill buyers will be hanging on their every word.

[From the Fairmont (W. Va.) West Virginian, Dec. 9, 1959]

EVIDENCE THAT IS TRULY HEADLINE MATERIAL

Certain of the evidence given at the drug hearings before a committee of the U.S. Senate is misleading and valueless, according to the president of one of the major drug companies.

Let's take a quick look at some of that evidence:

Here are some tablets whose basic cost is 2 cents. They are sold for 17.9 cents by the company to the retailer. He, in turn, sells them to the consumer for 29.8 cents.

That is a 1,500 percent markup.

Or here is a bottle of tablets purchased by a large drug company from a French firm for 12 cents. The bottle is sold to the druggists for $8.40 a bottle and then sold by the druggist for $14 a bottle.

That is a 7,000 percent markup.

The figures are admitted to be true, but called misleading and valueless and a headline item.

We say they are enlightening, valuable, and a headline item in the sense that the public should know about them.

We also say they are outrageous.

When medicines are so costly that the poor, the handicapped, the aged retired person, and the large family cannot afford to buy them—then we have reached a new low in this rich nation.

This is what has happened in many instances, as most persons knew before the current Washington hearings began.

But what could they do about it? It is a case of either pay—or do without. Just go away and die somewhere.

In the circumstances, the American people should encourage Senator KEFAUVER and his committee to persist and urge Members of the Congress to pass legislation which will correct the situation.

It should be emphasized that druggists and physicians generally are against drug prices that are too high. The hearings to date suggest that the blame lies with certain of the large companies.

Quite properly, these concerns point to increased costs for materials, equipment, and labor, and to the great cost of research. These are valid causes for an increase, but they do not explain the shocking markup on certain of the medicines.

As to research, many foundations and organizations are engaged in research having to do with cancer, heart diseases, tuberculosis, and the like. Millions of persons willingly contribute to such bodies each year.

But is it proper or ethical to expect the poor, the old and the handicapped to make the same contribution for company research as the man of wealth? This is done by certain of the companies through their enormous markups, according to the evidence. This is a secret tax which hits the poor the same as the rich.

There are, of course, inequities on every hand and it would be unfair to make a whipping boy of the drug companies or druggists.

But in all reason, those concerned should do some fast policing of themselves lest the Government find it necessary to interfere.

The public—and that means all of us—must be protected.

[From the Troy (N.Y.) Times-Record, Dec. 11, 1959]

ASSAYING DRUG PRICES

The drug industry has had its most articulate spokesmen on the stand to defend the current status of drug prices. The president of Merck & Co. reminds that the field is highly competitive and says the American public is getting a fair shake.

We can sympathize with the drug industry's argument that some prices must be high in order to pay for research and to subsidize the items that are failures. Yet the drug people should be reminded that other lines of endeavor are also highly competitive. The Ford Motor Co. took a severe licking this year when it was forced to pull the Edsel off the market.

Dr. Austin Smith, president of the Pharmaceutical Manufacturers Association, protests that his trade is being made a whipping boy for those who desire socialized medicine. This argument is silly and only beclouds the real issue. The present probe by the Senate Antitrust Subcommittee was not brought on by socialized medicine advocates. It was caused by the fact that Americans are demanding some relief from the burden of high drug prices.

Senator KEFAUVER said that in the 2 years his subcommittee has been studying pricing practices it "has received more complaints about the high prices of drugs than all other products put together."

We want to be fair with the drug industry. We appreciate the fact its expensive research is responsible for many people today being able to walk about in fairly good health. But there is more to be done. The industry should strive harder to bring prices down within the range of the pocketbook of the man with a limited income. It is the compassionate thing to do and the public will be grateful.

Mr. DIRKSEN. Mr. President, on February 8 the Senate agreed to Senate Resolution 238 which provides $425,000 for the Subcommittee on Antitrust and Monopoly. I supported this resolution in both the subcommittee and the full committee.

During the course of the debate, certain statements were inserted in the RECORD by the chairman. They are worthy of some comment.

Since I was absent on official business when these statements were made in the Senate, I ask unanimous consent that a statement I have prepared may be printed in the body of the RECORD at this point.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR DIRKSEN

The Antitrust and Monoply Subcommittee was established during the 84th Congress, and I have supported its budget requests inasmuch as it has long been my firm conviction that the perfection of the antitrust laws is essential to maintain a free competitive enterprise economy. The alternative to competition is Government regulation, to which I am unalterably opposed.

The legislative purposes for which this subcommittee was established must be accomplished without destroying the faith of the American people in business firms which, in the vast majority of cases, have been serving the people well and have been operating in accordance with the laws established by the Congress.

In my individual views on the activities of the subcommittee during the 85th Congress, which appeared in Senate Report No. 1345, 85th Congress, 2d session, I said:

"The free-enterprise system goes much further than service to the business community. It does, in fact, serve the interest of all the people, and it is these interests as a national consideration which must be constantly kept in mind.

"Freedom of action for business enterprise is obviously imperative in order to develop those incentives which provide the greatest efficiency in the production and distribution of goods to the consumers of the Nation. When undue restraints are imposed on that freedom of action, it will, indeed, jeopardize the flexibility and the capacity of our free system to serve the interests of the whole Nation. It might be pointed out, as an example, that if the price of any particular product is held to artificially low levels, the incentive to supply it and to expand productive capacity is restrained and the people are thereby denied the kinds and quantities of the goods which they desire and which they are entitled to have. This objective of our free system must be kept constantly clear." [1]

Too often it is overlooked that under our Constitution there is a separation of powers. The enforcement of the antitrust laws as well as other statutes is the responsibility of the Executive. All Cabinet officers are responsible to the President. Article II, section 1, of the Constitution provides that "The Executive power shall be vested in a President of the United States of America." [2]

However, every individual or corporation is entitled to a day in court. The Constitution, in article III, section 1, provides that "The judicial power of the United States shall be vested in the one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." [3]

The powers of the Congress stem from article I, section 1, of the Constitution, which provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." [4]

Accordingly, it is essential that all inquiries conducted by any congressional committee have a legislative purpose. It is not the proper function of a committee to determine the guilt or innocence of individuals or firms.

The current drug investigation is making headlines, but it is certainly not contributing to the legislative process, nor has it, in my judgment, suggested any new avenues for perfecting the antitrust laws. Under the

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[1] Activities of the Subcommittee on Antitrust and Monopoly, 1957, report of the Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, 85th Cong., 2d sess., S. Rept. No. 1345, Mar. 6, 1958, p. 11.

[2] "U.S. Government Organization Manual 1958–59," Federal Register Division, National Archives and Records Service, General Services Administration, p. 5.

[3] Ibid., p. 7.

[4] Ibid., p. 1.

terms of the resolutions which have authorized funds for this subcommittee, this is the only subject in its province.

During the course of the debate on February 8 the chairman stated:

"I think it should be pointed out also that sometimes the exploration of an issue, even though the result is that no bill is reported, may be of greater service to the public than would be the case if some legislation resulted" (CONGRESSIONAL RECORD, U.S. Senate, 86th Cong., 2d sess., Feb. 8, 1960, p. 2209).

If this were the primary function of this subcommittee, I could not in good conscience justify expenditures of public funds and the enormous demands upon private individuals who must prepare material for presentation to the subcommittee. It is to be hoped that American citizens will follow all congressional debates and hearings with interest and understanding, but every hearing must have a legislative purpose and cannot be justified on the basis that it is essential "to widen the knowledge of the American people on our economic system and its strength and weaknesses."

My concern with the possible misuse of the documents prepared by this subcommittee was expressed in my individual views of its activities during the 85th Congress. I said:

"I am aware, however, that sentences, paragraphs, and conclusions from such reports are so freely quoted in all parts of the land and used as authoritative statements, and these supplementary observations are made largely because I think the time has come for Members of the Senate to be extremely careful with respect to reports of this kind so that they do not become the vehicles for misimpressions and erroneous conclusions. This fact becomes more and more important as the work of the Senate and Senate committees increases in volume, and there is a growing reliance upon the work of committee staffs. The Members of the Senate in the last analysis must be held responsible for the observations which are set on paper and freely circulated as an official document."[5]

In the course of the debate on February 8, the distinguished junior Senator from Colorado [Mr. CARROLL], said:

"Can the Senator think of any other committee of the Senate which calls before it representatives of more giant corporations in the Nation than does the subcommittee of which the Senator is chairman?"[6]

Unless legislation results from the testimony of the representatives of giant corporations, then the subcommittee is not performing its proper function. Certainly the mere fact that it has been able to require the presence of industrial leaders who have been forced to spend countless hours in the preparation of testimony and in recent days testify long after midnight, is no criteria of the usefulness of its deliberations.

Reference was also made to the fact that the investigation of administered prices was largely stimulated by the testimony of economists who appeared before this subcommittee. During the opening phase of these hearings only five economists appeared to present their views. The social sciences, unlike the physical sciences, are subject to many interpretations. Without in any way disparaging the abilities of the five economists who appeared before this subcommittee in the summer of 1957, they represent a minute segment of the professional community in this field who are regarded with distinction in business, in our educational institutions, and in government. In fact, in July of 1957 when these initial hearings started, the membership of the American Economic Association, as published in a special edition of the American Economic Review that month, included 8,387 members.[7]

POINT 1. HAS THERE BEEN A WASTE OF THE TAXPAYERS' MONEY?

The statement inserted by Senator KEFAUVER in the CONGRESSIONAL RECORD of February 8, appearing on page 2213, includes the following:

"The record does not bear out the minority leader. The fact of the matter is that he is aware that, both as a member of the Senate Antitrust and Monopoly Subcommittee and as a member of the full Judiciary Committee, he voted to approve the program, budget, and resolution of the subcommittee. The subcommittee formulated and approved its program on January 21, 1959, which was submitted to the parent Judiciary Committee. This program which was approved by the minority leader, among other things, contained the following statements:

" 'The subcommittee's plans for the next year are wide in scope so that it can continue to study and seek an answer to this fundamental problem in the antitrust field. The subcommittee envisages the consideration of legislation to supplement existing antitrust laws.' "[8]

All members of the subcommittee, including the chairman, know that its conferences, which relate to the program and budget, offer a very meager opportunity for the discussion of legislative objectives and investigations. The usual procedure provides for a motion that the subcommittee investigate a topic such as professional team sports, asphalt roofing, steel, or drugs. It is then seconded and approved without prior consideration of the scope of the hearings or the nature of the recommendations which it hopes to develop. In some instances when these matters have been discussed, it became necessary for me to leave the meeting. Every Senator must discharge the other responsibilities of his office.

An example of the difficulties which confront many Senators is presented by the subcommittee's proceedings during its executive session in January. At that time, it was agreed that because of the civil rights debate scheduled to begin on February 15, the hearings planned for the month of February would be held between February 3 and 9. It was obvious to every member of the subcommittee that the long protracted schedule of Senate debates would preclude my attendance, as well as that of other Senators, during hearings after February 15. At this same executive session, it was agreed that the witnesses scheduled to appear in February would include members of the American Pharmaceutical Association, the American Medical Association, the Food and Drug Administration, and possibly the Federal Trade Commission.

However, this entire schedule was altered, and hearings were held starting on February 23 through February 27, rather than on the dates originally agreed to. In view of the important matters before the Senate, I was forced to object to the continuation of hearings while the Senate was in session. Much to my surprise, the chairman adopted the unusual procedure of holding hearings far into the night after a long and arduous debate on the Senate floor. Furthermore, instead of adhering to the list of witnesses which had been agreed upon in executive session, two unscheduled doctors, who were ex-employees of a drug manufacturer, were invited by the chief economist, Mr. Blair, to testify with respect to matters which had been covered previously by three physicians, as well as a representative of a mental health organization. By doing this, the chief economist overruled the decision of the subcommittee members as to who should testify.

It is my view that the proper procedure would have been for the chairman and the staff to maintain close contact with all the members of the subcommittee and advise them with respect to the scope of the hearings and the reasons for seeking testimony from particular witnesses.

On too many occasions the information I have received concerning the activities of the subcommittee was obtained from a press release, rather than from the chairman or the staff. Furthermore, I believe that this subcommittee should follow the procedures provided in the Legislative Reorganization Act of 1946, which states that so far as practicable all witnesses appearing file in advance written statements of their proposed testimony. This act also directs the staff of each committee to prepare digests of such statements for the use of all members. There is no reason why this procedure, which is prescribed for all standing committees, should not be applied to this important subcommittee.

With the adoption of Senate Resolution 238, the Senate has authorized spending $1,490,000 for the work of this subcommittee. It may spend $150,000 more in 1960 than its total appropriation of $275,000 in 1957. This was granted in Senate Resolution 57, authorizing $225,000, and Senate Resolution 166, approving an additional $50,000 during the 1st session of the 85th Congress.

It is significant that with only $275,000 provided for this subcommittee in 1957 it was able to conduct extensive hearings on the oil industry, accelerated amortization, as well as on amendments to the Packers and Stockyards Act. At the conclusion of each series of hearings, reports were submitted which included majority and minority views. The subcommittee also conducted extensive hearings on S. 11, a measure to reverse the Supreme Court action in the Standard Oil case. It started its continuing investigation of so-called administrated prices with testimony from economists, followed by an extensive series of hearings on the steel industry. These activities were time consuming and required the close attention of the subcommittee's members and staff.

Certainly, if any worthwhile accomplishment is possible, it should not be hindered by an arbitrary refusal to provide the funds which the chairman and the majority of subcommittee members in their judgment believe necessary. This is why I have always supported reasonable requests for the operation of this subcommittee. However, at the conclusion of this session the Senate will rightfully expect some legislative accomplishments to justify the moneys which have been authorized.

POINT 2. THE SUBCOMMITTEE'S LEGISLATIVE ACCOMPLISHMENTS

Many Senators have been immobilized and have found it difficult to discharge their many other responsibilities to their constituents and to the Senate as a whole by the necessity of participating actively in these extensive hearings. The legislative results in terms of laws adopted have indeed been meager. They include only two measures.

On September 2, 1958, a bill to amend the Packers and Stockyards Act of 1921 became Public Law 909, 85th Congress. Again, on July 23, 1959, a bill to amend section 11 of the Clayton Act, to provide for the more expeditious enforcement of cease-and-desist orders issued thereunder, became Public Law 107, 86th Congress. This measure was recommended by the administration, and

[5] Op. cit., Activities of the Subcommittee on Antitrust and Monopoly—1957, S. Rept. No. 1345, p. 15.

[6] Op. cit., CONGRESSIONAL RECORD, Feb. 8, 1960, p. 2210.

[7] American Economic Review, the 1956 handbook of the American Economic Association, vol. XLVII, No. 4, July 1957, Evanston, Ill., p. 476.

[8] Op. cit., CONGRESSIONAL RECORD, Feb. 8, 1960, p. 2213.

there was no opposition to its passage. The enactment of these laws does not constitute a record of outstanding legislative performance.

POINT 3. THE SUBCOMMITTEE'S PROCEDURES

It is my firm conviction that any subcommittee which expends large sums of the taxpayers' money, and also requires that private individuals in order to protect their good name must expend a great deal more of their own resources should seek the approval and guidance of the parent committee.

Based on 3 years of experience, I have no reservation in recommending that the entire Judiciary Committee should approve the initiation of any new hearings and define their scope. It is particularly essential that this procedure be followed in the case of the Antitrust and Monopoly Subcommittee because the chairman has delegated the direction and course of the investigation it pursues largely to the staff.

When a subcommittee is engaged in a complex and controversial investigation, the staff should have the benefit of all of the guidance and direction which the parent committee can offer so that its efforts will truly reflect the objectives which the Senators responsible to the electorate who serve on the entire Judiciary Committee believe may ultimately result in new and useful legislation in conformance with the resolution providing the funds.

POINT 4. THE PROCEDURES OF THE SUBCOMMITTEE'S STAFF

On many occasions in individual views and in a statement in the CONGRESSIONAL RECORD on January 22, I have expressed my concern with staff procedures which create headlines but do no credit to the objectivity and intellectual honesty of the Senate as a whole.

In my statement concerning the drug hearings on January 22, I said:

"The first witness was Mr. Francis C. Brown, president of Schering Corp., an ethical drug manufacturer. Shortly after Mr. Brown completed his testimony, the chief economist of the subcommittee introduced an exhibit into the record which seemed calculated to make headlines and front page stories. This was done by alleging that the Schering Corp. was marking up its products from 1,118 percent to 7,079 percent, when the fact was that Schering was operating on a 12- to 16-percent profit after taxes. Mr. President, the exhibit on its face was misleading, because it excluded the necessary expenditures of doing business under usual accounting practices accepted by the Internal Revenue Service by virtue of the income tax laws of our Nation. By excluding these expenditures, the chief economist used a computed cost figure of $1.57 in relation to the selling price of $17.90 for 100 tablets of prednisolone, when it was evident from the financial statement of Schering Corp. that proper allocated costs, namely, cost of production, research, selling, and distribution, administrative, and taxes, were $15.03 rather than the computed costs of $1.57. Had the proper costs been allocated, a profit of 16 percent after taxes, or a markup of 33 percent before taxes, would have resulted, which is the true picture. Mr. President, the result of all this was the glaring and misleading headlines and front page stories of 1,000 percent to 10,000 percent profit by drug manufacturers, when the facts show that there was 12 to 16 percent profit after taxes for these drug manufacturers." [9]

Other Senators also have voiced concern with these committee procedures. The distinguished senior Senator from Maryland in a statement in the CONGRESSIONAL RECORD of February 8 expressed his concern with the procedures followed by Dr. John M. Blair, chief economist of the subcommittee. He said:

"I have long been concerned that the preparation of hearings by any Senate committee dealing with the reputation of leading American firms should be entrusted to an individual who has been critical of the economic policies which have made our country great. I am not alone in making these characterizations." [10]

My position with respect to the staff was clearly outlined in my individual views on the investigation of administered prices in the automobile industry. I said:

"It is regrettable that the majority has permitted the long standing prejudices and biases of its staff to influence the preparation of its views. * * * Free-enterprise capitalism as it has developed in this country is the only economic system which at all times reflects the wishes of consumers through their purchases in free markets. It has provided incentives to producers. In fact, it has literally remade civilization. Attacks which reflect on its performance, while not attributing guilt to anyone and providing no suggestions for legislative remedies, are a great disservice to the Amercan people." [11]

POINT 5. STATEMENTS CONCERNING COSTS AND PROFITS BASED ON THE STAFF'S COMPUTATIONS

Throughout the course of the drug hearings, there has been a persistent effort to impute the costs of products from computations prepared by the staff and submitted as tables during the course of the hearings. In most cases, the chief economist's exhibits are based on only a small portion of a company's costs, principally materials and productive labor. They completely neglect the costs of selling, distribution, general and administrative expenses, royalty payments on patents, as well as the most important item of taxes, Federal, State, and local.

Such a procedure does little credit to the Senate since it has no relation to the real world of competitive business. It is purely an academic exercise. In every instance, the published financial statement of the companies who have appeared before the subcommittee reveal a reasonable relationship of profits to sales. Certainly, there is no instance where any company which appeared before this subcommittee has informed its stockholders of data which would justify a front page headline that it was making a profit ranging from 1,000 to 10,000 percent.

It will take many years for the firms who have testified on administered prices in the drug industry to clarify their true positions with the American people. The absence of competition, if such is the case, would have been detected by the enforcement authorities with little difficulty long before profits rose to these fantastic heights if all of the costs had been included in the computations.

Senator KEFAUVER, in his statement appearing on page 2213 of the CONGRESSIONAL RECORD of February 8, 1960, said:

"In presenting this table at the hearings it was made plain, as it had been made indelibly clear in other similar examples, that what was reproduced was computed production costs as compared to actual price and that it did not purport to include, nor represent that it included, such other costs as research, selling and distribution costs, taxes, and profits." [12]

An examination of the transcript of the hearings would indicate that the exhibits prepared by the subcommittee staff were not, in fact, so "indelibly clear" as to what had been included as costs. Indeed, the following colloquy between Dr. Blair and Mr. Francis C. Brown, president of the Schering Corp., at the opening of the hearings on December 7, shows that the staff's analysis was not only superficial, but totally unrelated to the economic facts of life and completely misleading:

"Mr. BLAIR. This, of course, translates into a price, into a computed cost excluding selling distribution cost of $1.57 per 100 tablets.

"Schering's price for a bottle of 100 tablets of meticortelone to the druggist is $17.90.

"Mr. BROWN. Now, if we were simply doing the things that you have described on this piece of paper, it would seem to me that your question would be pertinent. But as I have described in my statement, we are doing a great many more things, and these include the informational work, the pioneering work which we did in the preparation of these compounds, and which we continue to do as the company which originated them, and moreover, the supporting of the distribution system which we have built up over the years at considerable expense, and the maintenance of the research which we are endeavoring to do to push back the medical horizons for the future.

"These are just as much a part of our costs as wastage in production and tableting and bottling." [13]

It is significant that taxes, royalties, research, distribution costs, general and administrative expenses, as well as profits, were not included in this so-called computed cost. These obviously constituted the difference between $1.57 and $17,907. In relating overall profits to the company's financial statement, the following colloquy between Mr. Brown and the chairman is noteworthy:

"Senator KEFAUVER. You mean that research, profit and distribution and everything would make up that difference between $1.57 and $17.90?

"Is that your testimony?

"Mr. BROWN. You have our financial statement, Senator, which discloses exactly what our performance was. And I have also pointed out, if I may interrupt you, that we do not operate on the basis of a single compound alone. We operate on the basis of averages." [14]

A further discussion ensued:

"Senator KEFAUVER. What is the percentage of markup from $1.57 to $17.90?

"Dr. BLAIR. Mr. Chairman, it is 1,118-percent markup, roughly 11 times.

"Mr. BROWN. If I may be permitted to do so, I would like to say that I consider this not to be the proper relationship, because this does not include the expenses of doing business which I have outlined. This only includes the bare factory production cost." [15]

At a later point in the hearings, the minority counsel, Mr. Chumbris, raised a pertinent point. The following colloquy is of interest:

"Mr. CHUMBRIS. Dr. Brown, on page 10 you list various items in which you consider your costs that go into your products. Now let's take this, $1.57 per hundred.

"Does that include your rent or your plant maintenance or your depreciation? Is that in it?

"Mr. BROWN. This, according to this computation as I understand it, this would simply cover the labor charge and I don't know what other items may have gone into it, but it certainly would not include any of the general business expenses.

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[9] CONGRESSIONAL RECORD, U.S. Senate, 86th Cong., 2d sess., Jan. 22, 1960, p. 1090.

[10] Op. cit., CONGRESSIONAL RECORD, Feb. 8, 1960, p. 2147.

[11] Op. cit., Administered Prices, Automobiles, Report of the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, p. 312.

[12] Op. cit., CONGRESSIONAL RECORD, Feb. 8, 1960, p. 2213.

[13] Administered Prices in the Drug Industry, Report of Proceedings, Hearing before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, U.S. Senate, vol. 1, Dec. 7, 1959, pp. 53–55.

[14] Ibid., pp. 58–59.

[15] Ibid., p. 60.

"Mr. CHUMBRIS. Does it include your cost of taxes?

"Mr. BROWN. No.

"Mr. CHUMBRIS. You have already mentioned selling expenses, distribution, and your research.

"Senator KEFAUVER asked you a question. He said assuming that you add 23 percent and 8 percent, that doesn't take much away from your 1,000 whatever percent was used by Dr. Blair.

"Senator KEFAUVER. 1,118 percent.

"Mr. BROWN. It has to be taken away from 100 percent and not a thousand percent, Senator.

"Mr. CHUMBRIS. So therefore if you took into consideration 23 percent and 8 percent and 32 percent, you wouldn't reach a figure anywhere near 1,118 percent, would you?

"Mr. BROWN. In the one instance we are talking about, percentages in relation to 100 percent, and the figure that I gave on selling and distribution expenses being 32.7 percent is in relation to 100.

"Mr. CHUMBRIS. In order for the record to be clear, I would like to ask Dr. John Blair to take into consideration these different *percentages, and* add that to the cost of $1.57 and then compare the markup from that figure to the $17.90 that he mentioned per hundred.

"Dr. BLAIR. Mr. Chairman, I would like to answer that very briefly by stating that presumably most of the costs, excluding the selling and distribution costs to which Mr. Chumbris has made reference are included in the price from Upjohn to Schering.

"The plant costs of rent and depreciation, all of these various costs that are involved in the normal cost of doing business are reflected in a sale price made between one independent company and another independent company, and if they are not included then in effect what is happening is that Upjohn is selling below cost.

"Mr. BROWN. Dr. Blair is talking about the sale of bulk material by Upjohn, which has no relation to any of the expenses of operation of our company. How they arrive at this price is something I don't know.

"This is up to them. This is a price which was quoted to us, Senator, in an arm's length transaction." [16]

On the second day of the hearings, Mr. Brown presented a very lucid explanation of his firm's costs of doing business, which completely refutes the allegation of 1,118 percent markup as represented in the computation included in the exhibit submitted by Dr. Blair. Mr. Brown said:

"We at Schering do not allocate costs on a product-by-product basis, and I am sure that in this industry this is not the case, first, because this cannot be done, and second, because it would serve no useful purpose if it were attempted.

"Let me show you a typical cost pattern based on applying the relationship of the various costs in our financial statement from 1958, a copy of which I believe is in the hands of this committee, to the prednisolone 5-milligram tablet 100 bottle, 100 tablets per bottle, that we were discussing yesterday, and I will do this in the way which is customary and accepted both by accountants and economists in business and in Government as well.

"In the first place, it was indicated that the drug list price for this item was $17.90 a bottle of 100 tablets. For this, however, we would have received $14.03 after regular trade and cash discounts on sales to wholesalers, and only would have received the $17.90 on direct sales to retailers, which is a smaller part of our business than our sales through wholesalers.

"So in our case the production cost of sales, deducting now all income other than sales income, would be $3.05. The selling expenses would be $4.80. The research expenses would be $1.20. The administrative expenses would be $1.22. The royalties and other expenses would be 7 cents, and the income taxes which we pay to the Federal Government would be $1.86, or a total cost of $12.30.

"Now, the difference between these costs and what we would get for the product where we sold it through wholesalers, which is the bulk of our sales, would be $1.73, or 12.3 percent of what we received for the product.

"Now, this figure would be less than the 16 percent which we derive as overall profit on sales as it was discussed yesterday and as is reflected by our financial statements, because we have deducted income and interest, royalty income, and interest income from these calculations.

"I said yesterday, and I trust you will permit me to repeat, that a 12.3 percent return on sales is a reasonable return, considering the unusual risks involved in this business. These risks, I may say, having recently been recognized in a very important report issued by Her Majesty's Stationery Office for the Queen of England entitled, 'The Cost of Prescribing,' and known as the Hinchliffe Report, in which it lays emphasis upon the fact that in this industry a product can be here today and gone tomorrow, and that this is a factor which must be recognized." [17]

As I have already said, the staff and the chairman have slected certain expense items and neglected others. The use of 9 percent of the total expenses instead of the 84 percent which the company books revealed leaves some doubt in my mind as to the objectivity of the chairman and the staff. Such an approach is a grave injustice to the integrity and reputation of American business.

Exhibit No. 1 prepared by the staff and introduced during the hearings on Monday, December 7, was labeled, "Prednisone—5 mgm. Tablets, Computed Cost Based on Bulk Price Transaction and Contract Processing Charges." [18] However, after I challenged this misleading technique in a statement on January 22, the staff went to great pains to correct this obvious distortion of fact in the exhibits it presented during the hearings on Tuesday, January 26. Exhibit No. 156 introduced by Dr. Blair was a table entitled, "Meprobomate—400 mgm. Tablets, Computed Production Cost Based on Bulk Price Transactions and Contract Processing Charges (exclusive of selling and distribution costs)." [19]

It is significant that after my statement of January 22, for the first time these tables were labeled as Computed Production Cost "exclusive of selling and distribution costs." Even so, an examination of the exhibits fails to show any attempt to cover other normal business expenses, such as rent, electricity, heat, and taxes. These items are just as much a cost of doing business as selling and distribution costs, which Dr. Blair finally agreed to recognize.

In his statement of February 8, the chairman said:

"What is interesting, Mr. President, is this. When confronted with the computed production costs as devised by the staff of the subcommittee, the head of the Carter Products Co. then offered the company's own figures on Miltown costs and profits per tablet. The actual manufacturing costs, presented by the Carter Co., is 7 cents per tablet, which is identical with the computed costs of the staff of the subcommittee." [20]

The chairman comes to the conclusion that since the staff was correct in computing production costs of the Carter Products Co., the computation of costs of Schering, Merck & Co., and Upjohn should therefore be construed as accurate, although these were submitted before my objection to this procedure. It should be pointed out that exhibit No. 156 was introduced following my statement on Thursday, January 21, when I said:

"Mr. Chairman, as you know, I had no opportunity to be present at the hearings that were held earlier in December. I was unavoidably absent from Washington at the time. But I did get a chance to follow the work of the subcommittee in the press accounts that I saw not only in Chicago and elsewhere, but also the State of Tennessee when I went down to visit my grandchildren and family in Christmas recess.

"Frankly I was startled by some of the things that were disclosed, and I thought some of the things I noted in the press were absolutely fantastic and incredible with respect to the markups on prices by Merck, Schering, and others.

"I did call my staff man and said I wanted the records reviewed to ascertain just exactly what this was all about. Mr. Chairman, if I am correct, I think these amazing markups that were so freely bandied about in the press were nothing more than comparisons of raw material with the ultimate cost of the product by the manufacturer, but did not take into account all the other normal business expenditures such as distribution, research costs, overhead, taxation, and every other item that anybody who has ever been in business knows is a normal and appropriate charge for doing business.

"Now, Mr. Chairman, if that is the case, and if those alleged markups were nothing more than comparisons of raw material with the ultimate selling price of the manufacturer, then I must at this point in the record, I must at this moment make a protest on the ground that this is terribly unobjective and unfair and completely inequitable." [21]

As I stated previously, the Carter exhibit was labeled "computed production costs" whereas in the case of Schering, Merck, and Upjohn, the exhibit was labeled "computed costs" exclusive of selling and distribution. In my speech on January 22 I called attention to the fact that even though witnesses clearly illustrated a breakdown of allocated costs, the subcommittee ignored the explanations and continued to talk of "asinine" markups which reached the ridiculous figure of 10,000 percent on the sixth day of the hearings. In view of this record, it is difficult for me to accept the explanation offered in the chairman's statement to the Senate on February 8.

POINT 6. MISLEADING HEADLINES RESULTING FROM THE SUBCOMMITTEE'S HEARINGS

Without attempting to review once again all of the newspaper comments which were included in my statement of January 22, I want to emphasize that editors from all sections of the country have been critical of certain aspects of the current series of ethical drug hearings. A few outstanding examples of the reaction to the subcommittee's procedures are indicated in the following editorial comments.

The Newark (N.J.) News, of December 12, 1959, said:

"Senator KEFAUVER is on the wrong side of the street if he thinks the high cost of pharmaceutical research and promotion—or any other industrial research for that matter—should be financed out of capital and not out of earnings. At its best, research is

[16] Ibid., pp. 62–64.

[17] Op. cit., Administered Prices in the Drug Industry, report of proceedings, vol. 2, Dec. 8, 1959, pp. 306–308.

[18] Ibid., vol. 1, Dec. 7, 1959, p. 50–A.

[19] Ibid., vol. 9, Jan. 26, 1960, p. 2120.

[20] Op. cit., CONGRESSIONAL RECORD, Feb. 8, 1960, p. 2213.

[21] Op. cit., Administered Prices in the Drug Industry, report of proceedings, vol. 7, Jan. 21, 1960, pp. 1348–1349.

a big risk and it would be unfair to expect a publicly owned corporation to gamble with new capital.

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"But politics and pursuit of headlines must be subordinated if discovery of new ways to cure disease and prolong health are not to be impeded or even discouraged. Too many owe too much—perhaps their lives—to pharmaceutical research." [22]

Excerpts from the Chicago Sun-Times of December 12 said:

"On the first day of his subcommittee's investigation of the wholesale price of prescription drugs, Senator ESTES KEFAUVER created headlines that read: '7,000 Percent Markup in Drugs.' This was in reference to one particular drug deal. It certainly is not typical of the entire pharmaceutical industry as evidence later in the week brought out.

"Prices go down in the drug field as competition intensifies, as mass production takes over, and as manufacturing techniques improve. This is true of most American manufactured goods. In measuring the cost of drugs, expensive research costs must be taken into consideration.

"A corollary of Senator KEFAUVER's investigation should be the good the industry has done as well as the prices it charges. The Senator should keep his investigation in perspective even though this might not give him as much limelight." [23]

The Detroit News of December 9 said:

"If there has ever been a congressional inquiry which started out on the premise that there's a lot we don't know and we want to find out, we can't recall it. The standard approach appears to be: 'We know the answers; all we need are facts to match.'

"Unfortunately for the drug industry and the public, the Senate investigation into drug prices appears to be cast in the classic mold. The probers seem already convinced that prices are unconscionably high; their predilections show in the glee with which they hop upon the spread between the material cost of a pill and its retail price—a comparison which, taken alone, ignores all kinds of pertinent factors." [24]

The San Jose (Calif.) News, of December 9, 1959, concluded an editorial with this statement:

"As is true of many congressional probes, there is a tendency to blow off to the press and to the public on facts that are slender and do not quite tell the complete story.

"We are not in any way disparaging the fact that drugs are expensive. All health measures are expensive especially during a period of inflation. But the Senate committee is wasting lots of money and time and energy that should be a Justice Department bailiwick, if there are any grounds for an antitrust action." [25]

On many occasions, I have stressed the need for preventing those who abhor our free enterprise economy, which is motivated by profits, from deriving comfort through congressional investigations. The Salina (Kans.) Journal of December 15, 1969, developed this thesis. It said:

"This country was developed on the profit motive; profits which today it has become fashionable to term 'excessive' were essential to create the capital pools without which further development would have been impossible. Our system, even our Government, is based on profits. They are the source of indispensable income taxes. But the investigators ignore all that.

"Listening to these congressional committees, a visitor from abroad would gain the impression that American profits are not without honor save in their own country." [26]

Even newspapers published in the home State of the chairman take exception to the methods which have characterized the hearings on administered prices in the drug industry. The Kingsport (Tenn.) Times of December 14, 1959, said:

"It would appear that whether the price is out of line with cost can best be discovered by the books of the company rather than by comparison of figures that may be less than complete. The Government has access to the books of the companies for audit. This dramatic investigation is hardly necessary.

"In any case it is hard to see what the Government can do even if the prices are higher than we think is fair. No one is going to suggest that the Government fix prices, are they?

"In this connection it is noticed that recently the courts threw out the Government's case of price fixing against some of the drug companies. The judge decided that the Government did not have enough evidence to warrant giving the case to the jury." [27]

Certainly partial cost data as prepared by the staff would not be accepted by any Federal judge as evidence in an antitrust action.

Again, the Chattanooga News-Free Press, in an editorial of December 10, 1959, said:

"Senator ESTES KEFAUVER'S subcommittee investigating drug practices has gotten off to a start with some pretty tricky business that has successfully captured national attention but seems to be highly and purposely misleading:

"A subcommittee staff economist came up with the contention that it cost one drug manufacturer $1.57 to make a bottle of arthritic pills called prednisolene that was sold at $17.90. This, the staff economist reported with a note of triumph, was a markup of 1,118 percent.

"This also was a phony claim.

"If the staff economist tried to get away with such a distorted picture in advertising, the Federal Trade Commission or somebody else would be on him posthaste. The Kefauver subcommittee headline seeker (and achiever) had neglected to put into his price comparison other vital cost factors such as production, marketing, administration, research, royalty, and taxes. The company figured these and other costs in and claimed the alleged 1,118 percent markup dissolved down to a 'reasonable' profit of 12.3 percent. That's quite a difference; somebody's badly wrong.

"Perhaps the prices of some drugs are too high, but the subcommittee won't find the answers and help solve the problem if it uses rigged figures. It is possible that some may consider such things, though not accurate, to be good politics." [28]

I cannot believe that it is even good politics to mislead the American people. Over the years, they have demonstrated an uncanny ability to detect truth from falsehood.

The medical journals also have become concerned with the attacks on the drug industry.

POINT 7. THE VALIDITY OF USING PROFITS RELATED TO NET WORTH AFTER TAXES RATHER THAN PROFITS RELATED TO SALES

In every industry, there are appropriate measures of its profitability. However, it is misleading to apply the same criteria to producers where cost based on the proportion of payments for wages and salaries in terms of total sales and the capital investment required differ widely.

In the ethical drug industry, the capital costs are relatively low as contrasted with the expense items for salaries of scientists, doctors, and laboratory workers who are developing the new products which have improved our health standards. Furthermore, because the use of these products must be explained to the medical profession, it is impossible to promote them through mass media. Their therapeutic properties must be disseminated in a professional manner to a very select group of highly educated individuals. This is an expensive process.

It is also necessary to insure that these products are on the shelves of all local retail druggists so that they are available when prescribed.

A comparison of net profits to sales after taxes in an industry where salaries constitute so large an item is more meaningful than one based on the return on net worth.

The economics involved were presented by Frederick L. Thomsen, Ph. D., a consulting economist for the Pharmaceutical Manufacturers Association. His testimony must be seriously considered by the subcommittee since there has been much confusion as to the degree of profitability in the drug industry. He also deals with the question of the proper correlation, if any, between profits and prices in this field. Dr. Thomsen's testimony, found on pages 5540–5544, March 15, 1960, CONGRESSIONAL RECORD, is particularly helpful in understanding the economics of the drug industry:

"In fact, if the entire profit of drug manufacturers were wiped out completely, buyers of consumer drugs on the average would hardly notice the difference in prices, which could easily be lost in the shuffle. Small changes in wholesale prices frequently are not reflected in retail prices. No; the concern that has been felt over drug prices has not been on the order of a few pennies per dollar, but of fancied profits running to many hundreds or thousands of percents, that do not exist in reality because the false measures of costs that have been used to adduce such figures have not taken properly into account all costs, position on the life cycle of the drug, and other conditions that have been dealt with in the foregoing analysis.

"A "company-by-company approach to the drug industry, and the singling out of the most profitable items in each company's line, coupled with inadequate measures of costs, can produce a totally erroneous impression of the across-the-board possibilities for price reductions through profit elimination. Only a very small reduction in the level of drug prices, and an even smaller percentage reduction in the total cost of a cure, would result if all profits of all the drug companies were wiped out." [29]

POINT 8. FOREIGN PRICES ARE NECESSARILY LOWER THAN U.S. PRICES

Throughout the course of these hearings, there have been frequent efforts to relate the quoted prices of specific products in other countries to the prices prevailing in the United States.

In almost every instance, the products in question were not manufactured here, but abroad. Labor costs, taxes, and distribution costs are, of course, far less than in this country. The cost to the individual patient in terms of the average income abroad is not appreciably different in other countries than in the United States.

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[22] Op. cit., CONGRESSIONAL RECORD, Jan. 22, 1960, p. 1091.
[23] Ibid. p. 968.
[24] Ibid.
[25] Ibid., p. 969.
[26] Ibid.
[27] Ibid., p. 970.
[28] Ibid., p. 971.
[29] Competition and Profits in the Ethical Drug Industry, statement by Frederick L. Thomsen, Ph. D., consulting economist, Pharmaceutical Manufacturers Association, before the Senate Subcommittee on Antitrust and Monopoly Legislation, Feb. 23, 1960, pp. 13, 17–18, 20, 22, 24–25.

It is difficult to understand the purpose of the subcommittee in making these comparisons. The obvious justification for the differences in cost were developed by several witnesses. Mr. Henry H. Hoyt, president of Carter Products, Inc., in his testimony before the subcommittee, said:

"However, I do think in trying to compare foreign prices with U.S. prices, you have to take into consideration all factors involved, such as per capita income, real wages, and so forth. For example, the per capita income in the United States is 13 times as much as in the Argentine, 8 times as great as in Mexico, 2½ times more than in Germany. As I said before, it is unrealistic and misleading to try to make direct comparisons on a conversion rate of exchange, because exchange is not based on living conditions. It is based on the flow of money between the countries or it is an artificial fixed rate, and I have been in the export business, and you must get your products down to the scale of living in the foreign countries." [30]

He also said:

"I have a list of the conversions here on a per capita income basis, and I think that if you take the Argentine price, you must multiply by 13, the Australian price by 2, and the Brazil price by 19, Canada by 1½, France by 2½, Germany by 2½, Italy by 5, Japan by 8, Mexico by 8½, the Philippines by 11, Switzerland by 1½, United Kingdom by 2, and I just think that anybody who converts on a rate of exchange basis is not getting the true picture. Just because things are cheaper abroad, that is why we have protective tariffs in this country, because our American industry cannot compete with the lower scale of living abroad." [31]

Another witness, Mr. Alvin G. Brush, chairman of the board of American Home Products Corp., also dealt with this same problem. In his testimony, he said:

"One reason we can sell so low in England, in the first place we don't sell in dollars in England. We sell in pounds, shillings, and pence. We don't employ Americans in England. We employ English men. These goods are entirely manufactured within the British economy, and the cost of those goods is materially lower than the costs in the United States. A bus driver in London gets 12 pounds a week, which is roughly $34. This same man in the United States on the Fifth Avenue bus gets $110 a week. Now that is an exaggerated part of the economy, but we can do business in Britain for about half of what we can do business for in the United States, and our goods in Britain are made in Britain and sold in Britain, and they are produced by British employees, and the whole economy is in pounds, shillings, and pence, and you can't compare that kind of an economy.

"We could ship the goods from the United States and let some of our employees out, if that is what would be preferred. But as I understand, we want to keep our people working in the United States and not have the goods pouring in from these foreign countries, who have a distinct advantage over making goods in the United States.

"You can buy transistors in Japan for one-quarter of what you can buy the same thing in the United States. You can buy shirts made in Japan for practically a third of what you can buy the same shirt for in the United States. You can buy barbed wire in Germany much cheaper than you can buy the same barbed wire in the United States. This isn't only true of the drug industry. This is true of all prices. The economies of these countries are much lower in prices than we are, and if we continue to push our prices up, we will price ourselves out of the world markets and we will force ourselves to do business in those local countries, by having local operations." [32]

American capital, unlike our workers, is in a position to move overseas and establish investments in other countries. With the advent of the European and Latin American common markets, there will be new incentives for American firms to manufacture their products abroad. However, American workers are not going to abandon their homes and bring up their children in other lands with not only lower living standards, but different cultures and traditions.

I am concerned that the approach which has been adopted by the subcommittee of comparing foreign and domestic prices, if it is carried to its logical conclusion, will result in the loss of employment for many of our workers, as many products besides pharmaceuticals can be produced abroad and shipped back into the United States. However, if such a trend were to develop, I doubt that there would be enough individuals here with sufficient purchasing power to provide an attractive market for them.

While the witnesses have discussed the relationship of foreign currency to the dollar as well as the lower prevailing wage rates, there are still other factors which are overriding in any comparison of foreign prices with those quoted here in the United States.

President Eisenhower in submitting the budget for the 1961 fiscal year proposed expenditures for major national security totaling almost $46 billion.[33] In addition, international affairs, which includes our mutual security program, will require another $2 billion.[34] These expenditures are the price Americans gladly pay to maintain freedom. They total almost 10 percent of the projected gross national product for the coming fiscal year.

These costs must be recovered in the price of all goods and services sold in the United States. Every product we buy, whether it is a pill, a ton of steel, or an automobile, includes a payment for the preservation of freedom. In addition to a heavy tax burden, American producers must observe the Fair Labor Standards Act which requires premium payments for time worked in excess of 40 hours per week. There are minimum wage provisions and many other elements adding to labor costs which are not present in most foreign countries.

Our good neighbor to the north, Canada, although it has a hard currency, still is able to pay lower wages than those which United States producers must meet. According to the National Industrial Conference Board, the average hourly earnings in all Canadian manufacturing in 1958 was 1.66 Canadian dollars.[35] In the United States the comparable figure was $2.08.[36] However, in spite of this difference in labor cost, the Canadians enjoy a far more realistic tax situation with respect to depreciation, an element of cost which many witnesses before this subcommittee have shown is not adequately met in the United States under existing interpretations of our tax laws.

During the course of the hearings on administered prices in steel on August 10, 1957, Mr. Robert C. Tyson, chairman of the finance committee of the United States Steel Corp., stated that:

"I start with the indisputable fact that, because of inflation, to construct or purchase new plant or equipment today costs a vastly greater number of dollars than the plant or equipment being replaced cost 20 or more years ago. Yet the depreciation on these old plants is required for tax purposes to be based on the relatively small number of dollars paid for them long ago. As a result the depreciation currently allowed is quite insufficient to equal what has to be paid out when the old facilities are modernized or replaced.

"In the case of United States Steel and for many other companies, the addition to regular depreciation on old facilities of 5-year amortization on that portion of new facilities certified as necessary for the national defense has approximated, temporarily, a truer total of wear and exhaustion on all facilities based on current dollars. The inclusion of 5-year amortization in United States Steel's costs has not resulted, as some of our critics have misleadingly contended in the past, in an overstatement of wear and exhaustion, realistically considered. It has served instead to prevent a more serious understatement of depreciation cost.

"Few people realize the extent of the deficiency in depreciation. United States Steel has calculated the number of dollars of wear and exhaustion that would have been needed in each year since 1939 to equal in each year's dollars the portion of the buying power originally expended which was used up in the year's production.

"In every year since 1939, as shown in exhibit VI, the wear and exhaustion recorded—including amounts not allowed for tax purposes shown on the chart as accelerated depreciation for the years 1947 to 1952—failed to equal that needed for recovery of buying power. The 17-year aggregate deficiency was $904 million. The Federal income tax paid, as a result of treating this deficiency and the accelerated depreciation as income for tax purposes, aggregated $608 million, or 22 percent of the taxes paid.

"The $608 million for United States Steel and analogous amounts for all other companies, big and little, may be regarded as the hidden taxation of capital as it turns over through depreciation or, alternatively, as a hidden increase in the tax rate on true income." [37]

This position has recently been ably corroborated in a report by the Senate Select Committee on Small Business, entitled "Tax Depreciation Allowances on Capital Equipment." It was prepared by the distinguished junior Senator from Florida, Mr. SMATHERS. It makes specific recommendations which are worthy of serious consideration, including:

"1. Current depreciation policies should be reviewed and all of the practical proposals for (a) shortening the period for depreciating property, (b) permitting greater depreciation in the years immediately after purchase of property, and (c) depreciating property on bases other than cost, to reflect the inflation factor, should be considered.

"2. As a specific solution for underdepreciation, the adoption of triple-declining-balance depreciation and a Canadian-type class system for determining tax-depreciation lives of property should be weighed. A class system would, however, have to be adjusted to reflect differences between the economies of Canada and the United States, and the items placed in various classes should, generally, have shorter economic lives than those items now have under bulletin F. S. 2695, introduced by the chairmen of the subcommittees which conducted the hearings for this study, would authorize

[30] Administered Prices in the Drug Industry (Traquilizers), report of proceedings, Hearing Before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, U.S. Senate, vol. 10, Jan. 27, 1960, pp. 2326–2327.

[31] Ibid., pp. 2327–2328.

[32] Ibid., pp. 2408–2410.

[33] 1961 Federal Budget in Brief, Bureau of the Budget, Executive Office of the President, p. 18.

[34] Ibid., p. 23.

[35] The Economic Almanac 1960, National Industrial Conference Board, Business Fact Book, New York, p. 527.

[36] Ibid., p. 255.

[37] Administered Prices, hearings before the Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, 85th Cong., 1st sess., Part 2: Steel, Aug. 10, 1957, p. 246.

the use of triple-declining-balance depreciation on items having a useful life of 5 years or more." [38]

It is indeed a pleasure to be able to express my commendation for the excellent and objective study prepared by the select committee under the leadership of the distinguished junior Senator from Florida. It deals with an important element of cost which must be included in the price of any product, whether it is produced in the United States, Canada, or any other foreign country.

The report by the Select Committee on Small Business is a distinct service in assisting the Senate to establish a more favorable relationship between American and foreign prices.

I also hope that the Senate Finance Committee will give careful consideration to the bill, S. 2695, which was introduced by the junior Senator from Florida, Mr. SMATHERS, and the distinguished senior Senator from Nevada, Mr. BIBLE.

POINT 9. WHOLESALE PRICES TO DRUGGISTS ARE NECESSARILY HIGHER THAN ON BULK SALES TO THE GOVERNMENT

In merchandising a specialized pharmaceutical product, two related but separate steps must be taken.

First, the medical profession must be apprised of the value of a new product so that they will prescribe it. Secondly, druggists must be willing to invest their capital in maintaining an inventory so that new products will be available to their customers when they are prescribed by physicians. Wholesale drug merchandising thus requires individual contacts and promotional expense to a wide multitude of retail outlets. Unless a product is available on an almost universal basis, doctors cannot recommend it to their patients. Hence, it is to be expected that the selling and distribution costs on sales to druggists will be high.

To the contrary, when sales are made to the Federal Government on a sealed-bid basis, promotional expenses are at the very minimum. The efficacy of the product has been proven, or the Government would not be seeking bids for it. There is one customer who is purchasing in bulk. No problems of credit terms, advertising aids, or other sales assistance are involved. It would be most surprising if the prices quoted on sales to the Government were not materially lower than to retail druggists.

In his statement of February 8, 1960, appearing on page 2214 of the CONGRESSIONAL RECORD, the chairman said:

"Ciba sells its product, Serpasil, in 0.25 milligram quantities, in bottles of 1,000 to wholesalers at $32, who sell to druggists at $39.50, who, in turn, sell to consumers at $65.83. A small company, the Panray Corp., sells this same type of product, in the same quantity, to druggists for $6.25. In February 1959, Ciba was awarded a purchase by the Military Medical Supply Agency as a result of secret bids on this same product in bottles of 1,000, at the unit price of 60 cents. Think of this, gentlemen: Ciba sells the Government the same product for 60 cents for which the druggists of our great country must pay $39.50." [39]

From the above statement one would conclude that a small drug manufacturer could sell its product to the druggist at a much lower price than does the large drug manufacturer. Also, the question might be asked why Ciba sells to the Government at 60 cents where the wholesaler must pay $32 for the same 1,000 tablets.

An examination of the transcript reveals the true facts. The following colloquy, involving Mr. Myron Pantzer, president of the Panray Corp., removes the misunderstanding which has been generated.

"Mr. PANTZER. There are plausible differences from Ciba, we are different in this respect, that we did not seek the business of the product as priced in our own ratio of running the product for us, and the business originates to that which originates on an institutional level.

"If we were to enter a program of formal promotion and to gain recognition and credence and acceptability in prescription rating for our trademark for Panray on the medical professional level, we would have to charge a much higher price than $2.65.

* * * * *

"Mr. PANTZER. Well, briefly, Senator, we do not spend at this moment—and this is the situation for the last 2 years—a single penny to advertise this drug to the medical profession—our entire business on reserpine today has reduced itself where the business almost totally comes from competitive bidding. We do a very small business even at this level with the retail or wholesale drug field, because we are not doing a significant individual promotion or educational job, or a detailing job to the medical profession.

"Mr. CHUMBRIS. I think that you stated earlier that you do almost no business with the druggist on reserpine at $2.65. And therefore if you do very little business with the druggist, the consumer would not get it anyway.

"Mr. PANTZER. That is correct.

"Mr. CHUMBRIS. And I think you pointed out that when you did advertise, and when you did try to get acceptance from the druggists and the doctors, you charged $21 per thousand, is that correct?

"Mr. PANTZER. That is correct, sir.

"Well, if we were to promote this as pure specialty we would have to use the normal channels of promotion that are used by industry, we would have to first sell and familiarize our trademark to the medical profession, we would have to detail by personal contact the physicians to convince them of our reputation and reliability of production.

"This would of necessity lead us to have a much higher selling price to the druggist. And even at that level we did a very small amount of it, our price was not too much lower than Ciba's, the druggist did not beat a path to our door.

"We were out of our ballpark, and we were not capable of doing the tremendous promotional job to the medical profession on a product such as this." [40]

It is evident that if the small manufacturer, in this case Panray, were to compete for retail business with the large manufacturer the difference in price would not be as great as that implied by the chairman's statement.

With regard to Government bids, I would say that I think it very fortunate that the Government can obtain supplies from the drug manufacturers at such low prices. However, the statement by the chairman does not seem nearly as startling when testimony of the witnesses is examined. Mr. T. F. Davies Haines, president of Ciba Pharmaceutical Products, Inc., said:

"When we bid 60 cents for bottles of 1,000 here, we didn't anything like recover our out-of-pocket cost, we were poorer, then, when we got through with this than we were before we started. I am not talking about overhead, I am talking about the direct labor and material that went into those pills.

"In retrospect, it was perhaps a mistake that we did that. I only hope for the sake of my stockholders that we got some benefit out of it, that we got prestige in having our material used by the armed services that the doctors who used it in the military hospitals saw our name on it, and when they go out and practice in civilian life will remember it so that we get some institutional advertising out of it. I think in retrospect, perhaps, it is a mistake. It hasn't come forcefully to my attention until I prepared myself to come down here, I don't think I would do it any more." [41]

Again, Mr. Myron Pantzer, president of the Panray Corp., said:

"Yes. If we were to take any of those individual competitive bids to the Military Medical Supply or TVA, out of the total picture we would find that if this was the only type of business that we could do, we would have a very tough time to exist and grow. But the nature of the beast in this particular case is the following:

"We have a plant, sir, that is capable of turning out tremendous quantities of finished tablets, and we like to see our machines rolling at all times, because we like to see people again fully employed. And the only way to do it is to try to get production on which we can make a fair and reasonable profit, but make their situation in our picture part of the whole, not single them out as an individual entity. And this has been an area of reward for us in many instances.

"Mr. CHUMBRIS. If you had taken that one particular product and allocated all of the costs of doing business, you would not have made a profit, would you?

"Mr. PANTZER. As a single bid, no, but as a regular operation on a multi-mass-production level, yes, but a small profit." [42]

The above statements would indicate that on an isolated secret bid a company may entertain a loss or a small profit. Obviously, a firm that followed such a practice consistently would not be in business very long. In our free enterprise economy, profit is essential if business is to conduct research, expand facilities, or invest in new plants. A review of the transcript impresses the reader with the tremendous progress made by the drug industry in conquering disease. The importance of research has been demonstrated many times in the course of these hearings. As Mr. Pantzer pointed out in his testimony.

"I would like to say on that point that in this wonderful country that we live in, and with this wonderful medical profession that we have, there is no osmotic process that I know by which the physician can absorb the tremendous book of medical knowledge that is daily appearing in the medical journals, and I think the pharmaceutical industry renders an instructional job in keeping the physicians advised. I believe that the entire status of our public health would be thrown into jeopardy if we took the incentive out of new drug development, and we took the incentive out of trying to vie for the medical profession market.

"I think this is a factor of reward that we as citizens in part of the industry have the privilege to seek. And I think that we are a necessary part of the whole health process.

"I heard this morning, today, a little comment by Dave Garroway before I came here that I would like to mention. On trips to Russia, the public was advised to take your own prescriptions along, because you may have difficulty filling them there.

"We in this country don't have to worry about that, we can enter any hamlet in this country with a prescription and have it filled. This is a job that our field is rendering.

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[38] Tax Depreciation Allowances on Capital Equipment, report of the Select Committee on Small Business, U.S. Senate, 86th Cong., 2d sess., S. Rept. No. 1017, Jan. 7, 1960, p. 11.

[39] Op. cit., CONGRESSIONAL RECORD, Feb. 8, 1960, p. 2214.

[40] Op. cit., Administered Prices in the Drug Industry (Tranquilizers), report of proceedings, vol. 12, Jan. 29, 1960, pp. 2682, 2683, 2686, 2687–2688.

[41] Ibid., pp. 2833–2834.

[42] Ibid., pp. 2679–2680.

This is a job that I think is necessary. It may not be perfect, but I think it has done a wonderful job in lifting the health standards of this country to the highest in the world." [43]

POINT 10. GOVERNMENT PRICE CONTROLS ARE THE LOGICAL CONCLUSION OF THE SUBCOMMITTEE'S EFFORTS TO DATE

The long protracted study of so-called administered prices leads to the conclusion that the subcommittee's staff is concerned with the broad question of price controls in concentrated industries rather than the promotion of competition. In my additional views, to which I have already referred, in Senate Report No. 1345, 85th Congress, covering the activities of the subcommittee at that time, I said:

"I doubt whether anyone can absorb the full import of these questions without concluding that the hearing on administered prices might conceivably be directed to the whole broad question of price control in a so-called concentrated industry by means of Federal legislation. Insofar as I know there has not been the slightest hint that this investigation was concerned with questions of price control. That is a matter that falls within the jurisdiction of the Senate Committee on Banking and Currency.

"If it is the purpose of the subcommittee as such to investigate the price structure in certain industries with a view to recommending legislation dealing with the control or regulation of prices, that should have been made clear at the very outset of the hearing so that not only members of the subcommittee, but also of the full committee and all other Members of the Senate might be fully apprised of what certain members of the subcommittee might have had in mind. I recall raising the question from time to time whether there was any member of the subcommittee who contemplated introducing legislation for the control of prices, and I noticed on such occasions that there was a very timid and reluctant approach, indeed, to even so much as a discussion of the matter." [44]

I still maintain this position. It is gratifying that the distinguished senior Senator from Maryland, in his statement concerning the activities of this subcommittee which appeared in the CONGRESSIONAL RECORD of February 8, said:

"I am a strong believer in our antitrust laws and in their vigorous enforcement, but I decry attacks directed at bigness per se, since our country requires firms of every size and description to serve the needs of our people and to meet the challenge of the Communists. This is the only function with which this subcommittee should be concerned.

"It is my firm conviction that the problems of inflation and prices are not appropriate for consideration by the Antitrust and Monopoly Subcommittee. On the basis of jurisdiction, they are matters which are either in the province of the Senate Finance Committee or the Joint Economic Committee." [45]

Last year hearings were held on a bill, S. 215, to require prenotification before prices could be raised in so-called concentrated industries. This was an indirect attempt to institute price controls. No action has been taken on this measure. Dr. Raymond J. Saulnier, Chairman of the Council of Economic Advisers, in a statement submitted to the subcommittee on this measure, said:

"You have asked for the views of the Council of Economic Advisers on S. 215, an item of proposed legislation which would require corporations in industries in which there are but a few companies to 'file advance notice and make public justification before effectuating price increases.'

"In my view, the enactment of legislation of this type would be a long step toward a system of price controls that would ultimately, and I expect without too long a delay, extend over our whole economy; and surely no one of us believes that we could have price controls without having wage controls of equal scope and restrictiveness, and ultimately all the rest of the machinery of central economic direction.

"It would never be easy for me to persuade myself of the need for, or the desirability of, such a system of controls in peacetime." [46]

The Senate has provided the financial resources and the staff which the subcommittee requested. It is my hope and expectation that during the remainder of this session of the Congress, the subcommittee's activities will be directed at reviewing those areas which may suggest workable and reasonable legislative measures to increase the effectiveness of our competitive free enterprise system, rather than to impugn the motives of America's industrial leaders through newspaper headlines.

It is the responsibility of the Department of Justice, if it believes anyone is guilty of violating the antitrust laws, to institute either a criminal or civil action in the Federal courts. American traditions and the Constitution require a presumption of innocence until guilt has been proven. The insinuations of wrongdoing developed by statistical juggling on the part of the staff, as well as similar measures which could not be introduced as evidence into any court proceeding, are contrary to the objectives of the Judiciary Committee. Its membership consists of lawyers of distinction who understand the strength of our common law.

The parent committee has always shown great concern for the protection of the rights of every individual in drafting new statutes since the founding of our country. A similar concern should be expected of every subcommittee.

Mr. DIRKSEN. I ask unanimous consent also to have printed in the RECORD at this point as a part of my remarks an article entitled "Medical Unit Assails 'Bias' in Drug Inquiry," published in the Washington Post of March 20, 1960.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 20, 1960]

MEDICAL UNIT ASSAILS "BIAS" IN DRUG INQUIRY

PHILADELPHIA, March 19.—The executive director of the Nation's second largest medical association said today Senator ESTES KEFAUVER conducted a "biased and distorted inquisition" into the drug industry.

He said that KEFAUVER, as chairman of the Senate Subcommittee on Monopoly, used the recent hearings to present a great industry in an unfavorable light.

Charges were made that the drug industry is making excessive and unwarranted profits in the manufacture and sale of modern drugs.

"In my opinion, and in the opinion of the most respected legal minds, a congressional committee is not a court of law," said Mac F. Cahal, in a prepared speech. He asserted:

"It (the committee) is not established for the purpose of determining guilt or innocence. Nor is it supposed to mete out any form of punishment, even if only in the form of press stories reflecting the personal opinions of the chairman. Such an investigating committee is intended simply to determine if there is a need for legislation and this need, if it exists, should be objectively determined. Unfortunately, these goals are sometimes forgotten when a more subtle political motive is involved."

Cahal is executive director and general counsel of the American Academy of General Practice, an organization representing general practitioners throughout the country.

He spoke at a meeting of the academy's policymaking congress of delegates. The academy opens its 4-day 12th annual scientific assembly here on Monday.

Mr. DIRKSEN. On the question which was discussed today by my esteemed friend from Tennessee [Mr. KEFAUVER], in connection with the pharmaceutical industry, I shall have suitable comment to make at a subsequent time.

ETHICS IN CONGRESS AND THE REGULATORY AGENCIES

Mr. PROXMIRE. Mr. President, last Friday, when I appeared before the House Committee on Interstate and Foreign Commerce, the distinguished members of that committee engaged me in what I felt was an enlightening dialog on the problem of ethics in government. We discussed in some detail the problem of a code of ethics both for Members of Congress and for the regulatory commissions.

I ask unanimous consent that this discussion be printed in the body of the RECORD at this point.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The CHAIRMAN. Thank you very much for your statement to the committee with reference to this all-important problem. I think the record of the committee and the work that we have tried to undertake in the last 2½ years has proven that there should be some approach to this problem in a way that would bring about the high standard of practice in connection with these administrative agencies and all who are interested in matters before them. I appreciate having your support for some program to be worked out.

We just started hearings this week. We expect them to go on for some time during which all interested parties will be given an opportunity, who desire to be heard. First we appeared not to have very many, but in the last few days it has run up to about a hundred. So we will probably be here some time.

Mr. MACK, do you have any questions?

Mr. MACK. I want to commend the Senator in taking time to come over and testify before this committee on this very important subject. Several of us have felt that anyone who can't determine between right and wrong has no business serving in these responsible areas of government. You have indicated that this is a trend which has taken place in the last few years. Do you think that the appointments in the various commissions have been responsible for, shall we say, what is interpreted to be improper conduct in some instances, or do you think it is because we do not have a well defined law concerning ethics in government?

Senator PROXMIRE. Mr. MACK, I think it may well be that the appointments may have

[43] Ibid., pp. 2693, 2694.

[44] Op. cit., Activities of the Subcommittee on Antitrust and Monopoly, 1957, S. Rept. No. 1345, p. 14.

[45] Op. cit., CONGRESSIONAL RECORD, Feb. 8, 1960, p. 2148.

[46] Administered Prices, hearings before the Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, 86th Cong., 1st sess., part II: Administered Prices: Price Notification Legislation, app., p. 5851.

something to do with it. I would prefer, however, to concentrate on what we can do about it. I feel that there are several things we can do. I think this effort here would be extremely helpful in letting people know exactly what the code is, what they can do and what is conduct that is improper. The conscience may be with all of us, but it is a lot better if it is an educated and informed conscience. Providing this kind of understanding of what can be done, and what can't be done would be very helpful. I have great sympathy for these people who are given the support for promoting an industry and for regulating an industry. These two missions are frequently contradictory and conflicting. I think that if we can separate the functions so that different people have the promotion and the regulation responsibility that we can solve part of our problem. My own experience in Wisconsin is that you can have very vigorous promotion by people who under no circumstances accept any favor or any hospitality or any kind of social association. They can still fight hard for the industry that they want to promote, but do it without the kind of thing to which I have objected in my statement.

Mr. MACK. What I was trying to inquire about is this. You have pointed out only two instances. Do you think if the law had been very clear on this subject that we could have avoided these two instances that you have called to our attention?

Senator PROXMIRE. Let me just put it this way. Both of these gentlemen had come from Wisconsin. Both of these gentlemen had been on the Public Service Commission in Wisconsin. Both of these gentlemen had been chairmen of the Public Service Commission in Wisconsin. We have an alert press in Wisconsin, particularly in the State capital, and very aggressive and militant, and they do everything they can to expose any wrongdoing. We also have fine Milwaukee newspapers that cover the capital thoroughly.

The conduct of these men as far as I know was good in Wisconsin. There was no relationship with the public utilities they regulated. They did not accept cocktail party invitations. I am sure the opportunity might have been there. The utilities knew and the commissioners knew this was against the law, and improper, and if they did this, retribution would follow quickly and they behaved themselves. This is about as clear an example how the law can work disregarding the attitudes of all of us who are fallible as human beings to influence a higher level of ethical conduct.

Mr. MACK. That is the question I was really asking. I want to see if I understand you correctly. Then it was not a case of Washington being the downfall of your colleagues. It was a case of the change of circumstances in the law concerning the ethics in their positions of responsibility here as compared with Wisconsin. Is that a correct statement?

Senator PROXMIRE. I think that is correct; yes, sir.

Mr. MACK. Then I wanted to ask only one other question. You have recommended that we strike out unusual in "unusual hospitality." That would conform with the Wisconsin law so that it would eliminate any hospitality being extended.

Senator PROXMIRE. Yes, sir. That would be my understanding.

Mr. MACK. I have no further questions.

The CHAIRMAN. Mr. DEROUNIAN.

Mr. DEROUNIAN. Senator, I very much appreciate the result which you want to achieve as a result of your remarks this morning. I am glad that we have one simon-pure State where no legislature ever gets a free drink or cigar from any lobbyist. I am just wondering whether you think that should apply everywhere in the United States, whether Federal or State.

Senator PROXMIRE. I don't mean to say that we are simon-pure and we are all "pure as the driven snow." I suppose there are some violations but I think they are very, very few. When the violations occur, an alert press, as I say, and alert enforcement agencies call them to attention so they are very much restricted, and they are the rare, rare exception. I think it would be a very desirable thing in this country if this kind of law could be adopted by our States, cities, and our Federal Government.

Mr. DEROUNIAN. Do you smoke?

Senator PROXMIRE. I don't, but I don't disapprove of it.

Mr. DEROUNIAN. Do you take a drink?

Senator PROXMIRE. I have, yes, sir; occasionally.

Mr. DEROUNIAN. Have you ever had a free drink at one of the American Legion affairs here in Washington?

Senator PROXMIRE. No; I have not.

Mr. DEROUNIAN. You don't go to them?

Senator PROXMIRE. I don't go to the dinners. I don't accept hospitality to the dinners. I go to the meeting beforehand, and I visit with my friends from the American Legion.

Mr. DEROUNIAN. You have never yourself accepted even the slightest bit of hospitality from anyone who may have had an ax to grind in legislative matters?

Senator PROXMIRE. What I have done, and I have always insisted on it, when it is has been necessary for me to go, even though it has been embarrassing sometimes, I have paid my way.

If you will permit me, sir, I admit that this conduct on my part should not be an example. I don't think it is perhaps necessary. I just happen to prefer to operate this way. But I think that the conduct of a Congressman is quite different than the conduct of somebody in a regulatory agency who has a specific problem of regulation.

Mr. DEROUNIAN. We are looking for independence of these agencies, are we not?

Senator PROXMIRE. Yes, sir.

Mr. DEROUNIAN. What would be more consistent on independence than to say that nobody talks to these people at any time, Members of Congress, the Senate, political leaders, private industry? Why don't we just isolate them and make it a consistent rule?

Senator PROXMIRE. Because, No. 1, I don't think that is necessary. No. 2, I don't think it is desirable. We don't isolate our public service commission. We don't isolate our legislators and Governor in Wisconsin. They visit constantly with the people. A lobbyist can be of immense help in providing practical understanding of the impact of legislation on their industry. There should be this constant interchange and discussion. It would be very, very bad in my judgment if they were isolated and cloistered. I don't think the association has to be under circumstances which in any sense, psychologically, subconsciously, in any way obligated the regulators to the regulated industries who are entertaining them.

Mr. DEROUNIAN. Why don't you think that the word "unusual" should not apply to Members of Congress, too? Do you think Members of Congress should be able to accept hospitality?

Senator PROXMIRE. I would favor a change in the law that would prevent lobbyists entertaining or providing for Members of Congress. I would favor that.

Mr. DEROUNIAN. What do you think about having outside income for a Member of Congress? Do you think that is proper?

Senator PROXMIRE. I think it is improper if the outside income directly interferes with the particular responsibility of the Congressman.

Mr. DEROUNIAN. How about if it indirectly might interfere?

Senator PROXMIRE. I accept the implicit modification if it interferes.

Mr. DEROUNIAN. I am not pointing you out specifically but you are in the printing business. You are president of Artcraft. Your biography says that.

Senator PROXMIRE. That biography is wrong. I sold out my interest in it as soon as I was appointed to the Post Office and Civil Service Committee in the Senate.

Mr. DEROUNIAN. You ought to tell that to Senator HAYDEN because it is in the 1960 directory. Sometimes one of the assistants in an organization of that sort might take an order from your State of Wisconsin, a dairy cooperative or a lumberman's association for printing. They are all interested in legislation on which you vote. Certainly you are not going to vote against the dairy interests in the State. So you would vote for the dairy people. You got an order from the dairy people.

Senator PROXMIRE. This is exactly why I sold out my interest.

Mr. DEROUNIAN. In my mind that in itself would say you were bought on your vote. So this is a very tough thing to legislate. That is what I am trying to bring out. It is for no other reason than to say if you have a dishonest appointee or Member of Congress, no matter how much legislation you write, he will be dishonest. The basic thing is to have people who have integrity and whose judgment you trust. That is the basic thing. You are not going to change human nature. It is not as simple as to say pass a law they can't get a cigar or martini, and you will be on your way.

Senator PROXMIRE. I would like to say in annswer to that that I think our States can serve as examples. We have 50 States, all of which have different standards and different laws. I am not saying Wisconsin is best in all respects. But they have shown how this is workable practice and how it does not interfere with the promotion of industry or the interests of economic groups while it does prevent the kind of practice which we know in some States has been very bad, and perhaps in the Federal Government at times has been very bad.

Mr. DEROUNIAN. I think you might find out that these trips you spoke about of Mr. Durfee—I don't know whether the exact trips have been taken by others—several of these kinds of trips have been taken by Members of Congress and some of your colleagues in the Senate. I think the chairman of the Judiciary Committee, in front of whom you appeared, said he had taken a similar trip. Do you think he was dishonest or bought?

Senator PROXMIRE. Senator EASTLAND said explicitly he had not taken such a trip himself.

Mr. DEROUNIAN. If someone had taken it in the Senate, would you say that their judgment had been impaired materially?

Senator PROXMIRE. I think you have to judge these things in a particular instance. Here is a case where you have a commissioner whose explicit job is to regulate an industry or a commissioner whose explicit job is to regulate a television firm. If he goes with these people and accepts their hospitality, I think it is quite different than saying that a Congressman can't take any trips under any circumstances with anybody I think you just have to apply a rule of reason and a practical rule and operate on that basis. I think you can do this. I think you can draft a statute which will provide that a Congressman can accept hospitality from people who obviously have no interest in the kind of power and influence that the Congressman may have.

Mr. DEROUNIAN. Senator, about 3 weeks ago 10 members of this committee went to Kansas City, Mo., with TWA, to take a look

at their maintenance plant which is probably considered one of the outstanding ones in the world. We flew in a training jet. It costs TWA money, I am sure. They invited us to dinner. They gave us a cigar on the plane, as I recall it. Do you think that this committee's usefulness has been impaired insofar as the judgment goes on aviation because we went with an aviation company?

Senator PROXMIRE. I beg your pardon. This last part of your question disconcerted me a little bit I thought you said TVA was the host.

Mr. DEROUNIAN. No; TWA. I am against TVA because it takes industry away from New York.

Senator PROXMIRE. TWA, Trans World Airlines.

Mr. DEROUNIAN. TWA was the company that took us. I am just asking you whether you think that the independent judgment of this committee on aviation matters has been impaired because we went there at TWA's expense in a training jet, a new jet, and that subject matter we have jurisdiction over regarding safety in the air, and we have a public interest to care for. I don't know how else you are going to get there unless you get there by plane.

My question is do you think in view of what you said should not be done, no martini, no cigar, here we got a ride on a jet and we got a free dinner and a few cigars.

Senator PROXMIRE. I would say two things. I would say, No. 1, I am sure no member of this committee was influenced by that. I would say, No. 2, that should be prohibited.

Mr. MACK. Will the gentleman yield to me?

The CHAIRMAN. Let us not let the record get completely out of line. I don't want to get our committee or the Civil Aeronautics Board or the airline into difficulty. The committee paid for our transportation out there in the regular commercial fare. I think the gentleman intended to make that clear.

Senator PROXMIRE. Then may I modify my remark by saying this is perfectly proper and very sensible and desirable. The Congress pays for this. The Congress makes this investigation. I think this is in the interest of airline safety. I don't know how you judge these things unless you look at them.

Mr. DEROUNIAN. We got a free dinner. What I am saying is that you cannot be that minute in this thing. You have to let the judgment of the situation dictate what is proper and what is not proper, and the purpose of the trip, et cetera. I am just saying you can't strike it down to a martini or a cigar being bad if you accept it in all cases.

Senator PROXMIRE. I would like to make one final statement on that, and that is this was the argument we were up against for years in Wisconsin. It would have been very little expense or inconvenience to anybody if the committee had also paid for the dinner. What difference would it have made? It seems to me it would have been more proper, although I am positive no member of this committee was influenced by the dinner.

Mr. DEROUNIAN. You are right. I have no further questions.

The CHAIRMAN. Mr. FRIEDEL.

Mr. FRIEDEL. No questions.

The CHAIRMAN. Mr. YOUNGER.

Mr. YOUNGER. Senator, I am glad that you came over. I certainly agree with you as to passing similar regulations on Congress that will apply to any of the regulatory commissions. From that I judge that you do feel it is possible for Members of Congress and the Senate to have conflicting interests.

Senator PROXMIRE. Yes, sir; I do.

Mr. YOUNGER. And that they should be avoided, and that they should be prohibited?

Senator PROXMIRE. Yes, sir; I think they should be.

Mr. YOUNGER. Now, as to honorariums that Congressmen and Senators get for making speeches, what is your feeling on that?

Senator PROXMIRE. I think whether they are Senators or Congressmen or other Federal employees or Cabinet members or anyone else that this should depend on whether or not it is an agency or interest group that may have business which can be benefited by the action of Congress or by an action, I should say, of the particular Congressman who is going.

Mr. YOUNGER. For instance, if a Senator made a speech before the National Manufacturers Association and was paid for that speech $500 or $1,000, would you say that was wrong or right?

Senator PROXMIRE. I think that the National Manufacturers Association, this is a very tough one to judge, I would say it is probably all right. On the other hand, if he were to appear before some kind of machine tool organization group that had legislation pending at the time before a committee of which he was a member, and received an honorarium for that, I would say it would not be. I agree this is a very difficult thing to determine. The National Manufacturers Association has general legislative objectives, but because they are general and because they are generalized, I think that the danger would be very small in this kind of case.

Mr. YOUNGER. Is there any organization that probably has more concern over legislation before the Congress than either the U.S. Chamber of Commerce or the National Manufacturers Association?

Senator PROXMIRE. They have great interest in legislation pending before the Congress.

Mr. YOUNGER. If your theory is carried out, they do have concern about legislation, and if a Member of Congress or a Senator appeared before their national meeting and was paid $500 or $1,000 or $1,500 or maybe $2,000 for a half hour speech, wouldn't that be wrong? Shouldn't we get legislation against that?

Senator PROXMIRE. I think that because of the generalized nature of the interest that the National Manufacturers Association has, and the chamber of commerce has, that it probably would not be wrong. I suggest any legislation on it should be a matter of disclosure. In other words, letting the public know and letting the voters judge.

Mr. YOUNGER. How about labor unions?

Senator PROXMIRE. I think the same kind of rule would apply, although I think labor unions' interest is more specific than the National Association of Manufacturers. I have not accepted fees from labor unions or NAM, and I won't.

Mr. YOUNGER. How about NEA?

Senator PROXMIRE. I think the same kind of rule would apply.

Mr. YOUNGER. Wouldn't it be possible for any of these organizations, if they wanted to make a good contribution to a Senator or Congressman's campaign to put him on their speaking list and give him $1,000 or $1,500 as an honorarium for making a talk. Isn't that one fine way of covering up the campaign expense?

Senator PROXMIRE. Yes; I presume that might be done.

Mr. YOUNGER. Don't you think that it is being done?

Senator PROXMIRE. I have no direct knowledge that it has been done. It has never been done for me.

Mr. YOUNGER. Oh, Senator.

Senator PROXMIRE. It has never been done for me.

Mr. YOUNGER. It has not been done with me, either, because I probably am not a good speaker. But that does not mean that I don't know that it is going on. Just because I am not one of them does not prohibit me from having knowledge that it goes on. I think you have knowledge of your colleagues drawing fees. As a matter of fact, they have openly admitted it. You are aware of that, are you not?

Senator PROXMIRE. I say I have no direct knowledge. I have not seen it. They have not told me. I know of nobody who has gotten a fee from NAM or the chamber of commerce. They may have gotten it. I don't know. I doubt very much if NAM would pay a fee to a Senator or a Congressman.

Mr. YOUNGER. Perhaps you don't associate with them?

Senator PROXMIRE. Yes.

Mr. YOUNGER. Senator GOLDWATER?

Senator PROXMIRE. Senator BENNETT is a good friend of mine. He is the former head of it. I would be surprised by NAM paying a fee.

Mr. YOUNGER. Have you ever heard of Senator MORSE getting a fee?

Senator PROXMIRE. Yes. I think WAYNE has gotten a fee from a labor union. I don't think he has gotten it from NAM.

Mr. YOUNGER. I think that is true. My point is this: Are you willing to go down the line and pass a law prohibiting Senators and Congressmen from getting honorariums for speeches before any organization that has in any way, shape, or form its purpose to foster legislation before Congress?

Senator PROXMIRE. I would do it in a different way. I would say, and I would agree with the people who proposed it in the past, that we should disclose all sources of income for Members of Congress outside of their congressional salaries. Everybody knows that anyway. If the public knows about this, then I think that any wrongdoing will be avoided.

The difference between the way a Senator and Congressman operates and the way a member of a regulatory body operates is that the Senator or Congressman has a self-regulating system. You have an opponent who is going, if he is alert at all—at least we have them in Wisconsin, and I am sure you have them in your State—who is going to discuss in great detail what you have done and accepted. I think if this information is made known to the public, it will be self-policing. A Senator and Congressman have to stand up and say, "You bet I have accepted a fee from this labor organization" and try to defend it. Then the public has an opportunity to pass on it.

There is no such opportunity with a man who has the power in a regulatory commission. He does not go before the voters. He is appointed for a longer period of time. I think it is quite different.

Mr. YOUNGER. Now you are arguing back on the other side of the picture. You are saying now that you don't want any regulations with regard to the elective officers.

Senator PROXMIRE. Yes, I am saying we need regulations. I am saying we ought to have disclosure regulations.

Mr. YOUNGER. You said a while ago if they should they should not have any outside income. Do you mean that?

Senator PROXMIRE. I say you should not have outside income that conflicts, where there is a conflict of interest. For example, a member of the Agriculture Committee probably should not have income from a grain elevator or investment in a grain elevator or speculate in the commodity market.

Mr. YOUNGER. If you carry that to its logical conclusion, you won't have anybody down here with any money because how can you invest in stocks?

Senator PROXMIRE. We will all be Democrats.

Mr. YOUNGER. You say what?

Senator PROXMIRE. If we follow that, we will all be Democrats in the Congress.

Mr. YOUNGER. May I answer that there are more millionnaires in your Democratic convention than ever attended a Republican convention, and that you know.

Senator PROXMIRE. We are proud of them.

Mr. YOUNGER. Yes, that is all right. But how is a Congressman or Senator going to have any money, which if he does have some money and makes him a little independent on his vote and not necessarily dependent on his salary and he invests it in stock or has income from Bethlehem or some sugar company or any kind of a company that might be affected by legislation, you say he should not own any stock.

Senator PROXMIRE. I say he should not own stock that conflicts with his committee work or with his own particular specialized area of responsibility. I say this is something that you might possibly legislate on. However, I feel that the main way to legislate on this kind of thing is by disclosure, because you have opponents, you have an electoral process by which this is going to be exposed and used against a man if he is influenced by it.

Mr. YOUNGER. I would just make this comment. You say his sphere of influence. I think a Congressman or Senator, just because he does not serve on the Banking and Currency Committee, has very definite responsibilities in the economic field, regardless of what committee he may serve on.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. FLYNT.

Mr. FLYNT. No questions.

The CHAIRMAN. Mr. AVERY.

Mr. AVERY. Thank you, Mr. Chairman.

At this time, Mr. Chairman, I would like to renew my question of the other day. I asked the other day when we were considering this legislation for a list of witnesses to be available so we could put them in the record so we might know what to anticipate. Are there any further witnesses presently scheduled in connection with the hearings?

The CHAIRMAN. Yes. I wanted to have an opportunity to remind the committee that we have all members of the Federal Communications Commission back up here this morning to conclude with them. Then there are innumerable witnesses waiting beyond that. I hope I can have an opportunity to schedule a program if this and the business of the House will permit.

Mr. AVERY. Can the committee members be advised as to the witnesses we anticipate?

The CHAIRMAN. Just as soon as the clerk can get the witness list lined up. There is one witness here this morning from California that I hope we will be able to get to. It is Dr. Frank Newman.

Mr. AVERY. Thank you. On that note I have just one question to direct to the Senator. I am delighted to have you before our committee, Senator, because you may have observed the recommendation you made to our committee this morning was identical to the position I took in the committee last Monday, that if we are going to write a code of ethics on which I have a considerable amount of reservation, certainly we will have to delete that word "unusual" to make it mean anything at all.

Senator, by establishing a hypothetical situation here, could you not agree with me the way this bill is presently written, instead of invoking restraint upon members of the commission and their employees, actually we conceivably might be opening the gates almost wide open, having just the opposite effect that we might be striving to achieve? At the present time, it is a matter of conscience. It is a matter of what we describe as judicial ethics as to what a commission member might or might not do or accept. I am not a lawyer, but I am advised that the word "judicial" code of ethics has a very definite connotation to members of the bar. That is a continuing proposition under our present arrangement. I think it is fair to assume if we would pass this law as written, then the violations would be spelled out, would they not, Senator, as they are in this bill. From then on we would discard the code. We would be talking about just what is prohibited in the bill?

Senator PROXMIRE. I don't think that necessarily follows. I see your point, Mr. AVERY. I feel on the basis of our experience in Wisconsin you don't have to spell out everything. Your argument is that only the conduct which is explicitly proscribed will be prevented and any other unethical conduct which may not occur to the legislator and which therefore by omission seems to be permitted, can be freely indulged in. Our experience is that this is not what happens. Our experience is that this raises the ethical conduct all along the line.

Mr. AVERY. It is not so much a matter of conduct as it is timing. If you have a copy of the bill, on page 4 it limits this to when any proceeding is before the commission. We discussed proceeding the other day. It includes both adjudication and rulemaking. The chairman testified the other day the renewal of a license is considered to be an adjudication when the licensee files his application for renewal. So it seems to me that the day before, for instance, in a hypothetical case under this bill, that application was filed, a commissioner or an employee of the commission would be perfectly free to accept hospitality in any degree that he might have it offered to him.

Senator PROXMIRE. I think you raise an excellent point and I tried to meet the point in my statement by citing the experience of the FCC Chairman. In this case, the information in the newspaper was that Mr. Doerfer did not have anything pending before FCC. Therefore, he could be entertained all he wanted to. I think it should be modified so that he would be proscribed from accepting entertainment if there is any reasonable likelihood that he may have a case pending before the FCC within the near future.

Mr. AVERY. There again don't you get into a relative situation? He may have something pending or he might have in the near future. Isn't it reasonable that any licensee always has something pending before the Commission?

Senator PROXMIRE. I think so. I think you could modify it by deleting the word "pending."

Mr. AVERY. Then do you agree the way the bill is written we might have less restriction on the matter of hospitality than we have under our present arrangement?

Senator PROXMIRE. No; I would not. I think if this language is modified somewhat, it would have far more.

Mr. AVERY. I said as the bill is presently written.

Senator PROXMIRE. I think it can be improved. Even as written I would vote for this bill.

Mr. AVERY. Thank you, Senator.

The CHAIRMAN. Mr. HEMPHILL.

Mr. HEMPHILL. Thank you, Mr. Chairman. I would like to comment that I think carrying it to a dinner is carrying it to a ridiculous extreme. Down in my section of the country when the people get to Washington, it is a trip for them and they want you to come to dinners of the organization. There is nothing wrong in it. Nobody tries to bend your ear. They want their Congressman to come and show that he is a friend of a particular constituent back home. There is nothing wrong with that. If your philosophy be true, you are castigating people for trying to accept hospitality of a constituent back home. I have four invitations now to go to dinner, one of which I am going to at great inconvenience. I want to go see my wife and family. Would you carry it that far?

Senator PROXMIRE. No; my proposal would not do that all. You can entertain and be entertained by your constituents all you want. It is with registered lobbyists. The proposal is with lobbyists who are registered before the Congress to lobby for a bill, that entertainment on their part would be proscribed. If they do lobby without being registered, then they are in violation of the law.

Mr. HEMPHILL. These are organizations which have lobbyists on the Hill in each instance. They are interested in some legislation. They have the fellow back home interested in legislation. He thinks I ought to be interested in his view. I think I ought to, too. I am.

Senator PROXMIRE. I think so, too.

Mr. HEMPHILL. I represent my people. I am going to the dinner with him because that is part of my duty. Is that wrong?

Senator PROXMIRE. Not a bit. I think it may be a little awkward at first, but it works out fine if we just dutch treat and everybody picks up his own check.

Mr. HEMPHILL. We might go a little further than that. Would you go so far as to say that we should have a provision in the bill perhaps that if the wife of a Congressman or Senator, or even the President, received some fine trip or some fine gift that is unusual, is that to be reflected here?

Senator PROXMIRE. First, I would like to make it clear that I don't propose that this bill be amended to include Congressmen. I say we should have a separate bill for that. I think you can kill legislation very easily by amending it, and adding all kinds of things to it. I would not favor that at all. I think we should have a separate bill for Congress that should be pushed through and vigorously. I don't think this should be amended to do it. This is a proper bill with regard to the regulatory agencies, and I think that is what it should be. As far as the wife is concerned, she should not be included. There may be a little abuse, but I would not be concerned with that.

Mr. HEMPHILL. I might ask the Senator if he is called on to contact bureaus, agencies frequently by his constituents? I assume he is.

Senator PROXMIRE. Yes.

Mr. HEMPHILL. I assume if he represents his people that he makes the necessary contacts. Otherwise, they have no avenue of contact. Does the Senator do that?

Senator PROXMIRE. Yes. We try to be very, very careful in the phrasing of our letters. I am sure you do, Mr. HEMPHILL, and put it all on the record, and make it publicly available, and try to inform the agency that under no circumstances should it be considered confidential or private, and that it should be available to any interested party. So it is part of the formal record.

Mr. HEMPHILL. Then you would not go so far as to say that Congressmen and Senators representing their constituents should not make contacts downtown, show their interest, get information?

Senator PROXMIRE. No. I would agree with you we should make those contacts. It is an important part of our job. Bureaucracy is bound to be pretty impersonal and difficult for constituents, especially people in small business. I think a Congressman and Senator can perform a real service. The only thing is that it ought to be aboveboard and on the record.

Mr. HEMPHILL. Thank you.

The CHAIRMAN. Mr. COLLIER.

Mr. COLLIER. Senator, would you favor a provision in this bill which would provide, shall we say, for a monthly log or report to be made public, made available to every

Member of Congress, of any Senator or Congressman who calls the Commission or any agency of Government for that matter in regard to a private operation of some nature? In other words, if we are going to get into the area of disclosures let us go all the way.

Senator PROXMIRE. I would not see any objection to that kind of disclosure. I think very few Senators or Congressmen would object to it. I think we are proud when we fight for our constituents, and when we write an agency in a letter which we made public. Sometimes we issue releases on it. I see nothing at all wrong with making that public.

Mr. COLLIER. But to include in this law provision that would provide for such a procedure so that the folks down at the agencies whom we are trying to steer away from any undue influences would then be able to let the entire Congress, and perhaps the public know the calls of such nature as they feel might be designed to influence in the agencies from Members of Congress.

Senator PROXMIRE. Yes.

Mr. COLLIER. Thank you.

The CHAIRMAN. Mr. GREEN.

Mr. GREEN. No questions.

The CHAIRMAN. Mr. NELSEN.

Mr. NELSEN. I am happy to pay my respects to my neighbor, Senator PROXMIRE. I come from Minnesota. I am sorry that I didn't get in to hear the complete testimony, but I understand this deals with regulatory agencies. I was also interested in your conclusions relative to Members of Congress. I would like to ask the question, do you feel that a Member of Congress should deal with legislation from which he himself might derive some benefit? For example, voting on legislation and he himself be a recipient of the benefit from the legislation he votes for.

Senator PROXMIRE. It is my understanding, or at least I have seen it happen very often, that Senators will announce because they have an interest they won't cast a vote. I think that is proper conduct.

Mr. NELSEN. The question I was leading up to was this. I happen to operate a farm. I wondered about farm legislation. I have never negotiated a commodity loan of any kind on any products so I am not concerned. But here we deal with legislation where there are many farmers who participate in the program that are Members of Congress. It would seem to me that there is also a connection there. I do not think it is very material. But if we are going to draw a code of ethics certainly it would apply to a Member of Congress who votes for legislation that will provide commodity loans that he might be a recipient of on his farm. I would like to ask another question relative to Members of Congress. You feel that this code should not apply to Members of Congress?

Senator PROXMIRE. May I say at this point, Mr. NELSEN, that I feel that we should have a code of ethics for Members of Congress, but I think that you should no more amend such a bill by including the regulatory agencies than you should amend this bill to include Congress. I think they are separate problems and I think they would both have a far better chance of passing if they were separated than if they were combined. I think we should have a code of ethics for Congress.

Mr. NELSEN. I was the administrator of the rural electrification program and we dealt with loans that would run up to $10 million. I have had more pressure exerted on me by Members of Congress than anybody else. In this particular case, we were confined by restrictions in the law on which we base our judgment on loans. Yet I have had Members of Congress put pressure on me far exceeding anyone else for these loans. Do you feel that should be done by Members of Congress?

Senator PROXMIRE. I think that any action that is taken under these circumstances by a Congressman should be public and should be publicly acknowledged. I think that if they have no interest themselves, that is, if they are not benefiting from their own farm or farms in this kind of a situation, and it is publicly disclosed, the wrong is very small. I can't see any really great objection to it, provided as I say it is fully disclosed.

Mr. NELSEN. My point is this: It is very difficult for an administrator of any program to follow the law when you have the lawmaker putting pressure on the agency. I believe that if we are going to draw a code of ethics we ought to have one that applies to Members of Congress and their conduct, as well as any agency. It is very easy for us to pick on people downtown that are handling a program. Sometimes the spotlight needs to be turned on us. I think maybe we ought to give some consideration to that.

Senator PROXMIRE. I agree with you wholeheartedly. I think this is a very difficult and serious problem. I think it is so important, as I said to Mr. HEMPHILL, that Members of Congress do attempt to humanize the administration or the bureaucracy by representing their constituents. I think this very delicate area has to be handled with good judgment and the best way to do it properly I think is through disclosure.

Mr. NELSEN. Regarding honorariums, do you feel a Member of Congress should accept an honorarium of $500 to make a speech, and then the speech is written for him and handed to him before he goes, which fits the pattern that somebody wants delivered? Do you think that is right and proper for a Member of Congress to do?

Senator PROXMIRE. If a Member of Congress should go out and speak for a group of his constituents, the League of Women Voters, or some group, the Republican Party in his county, or something like that, I can see nothing wrong with that kind of situation; if he speaks to a special interest group that has particular legislation that they want passed, and he is obviously interested in it and going to be affected by it, then I think it is very questionable. I have not made up my mind finally, Mr. NELSEN, whether this ought to specifically be outlawed or whether the way to handle it is with full disclosure and let the opponent in the next election or the opposing party regulate it by our political process. I am inclined to favor disclosure.

Mr. NELSEN. I might make this observation relative to a Member of Congress calling an agency. I think it is perfectly proper for them to make contracts, to make inquiries, to encourage consideration, but I do not believe a department official should be subjected to abuse if he fails to go along with the recommendation that does come from Members of Congress.

Senator PROXMIRE. I would agree 100 percent. There should certainly be no abuse. There is no question about it. I think it is self-defeating. I don't think it is effective.

Mr. NELSEN. Thank you.

The CHAIRMAN. Mr. KEITH.

Mr. KEITH. No questions.

The CHAIRMAN. Mr. CURTIN.

Mr. CURTIN. No questions.

Mr. MACK. Mr. Chairman.

The CHAIRMAN. Mr. MACK.

Mr. MACK. I would like to correct the record in case we left the wrong impression. I am certain my good friend and colleague, Mr. DEROUNIAN, did not intend to infer that the conduct of this committee was improper in the TWA Kansas City case. I am very familiar with that, because I know that this committee has been trying to make such a trip for some 3 years, and that we have planned it on several occasions, and upon each occasion we found it necessary to cancel the trip. I wanted very much to make this trip this year. I was not able to go. But I did find out about the trip and all the particulars before the trip was made this year. First of all, the committee did buy tickets for every Member of Congress and the staff who accompanied them on the trip. For all of the members of this committee who made the trip, the tickets were purchased and TWA received the money.

In the case of the entertainment, it is my understanding that part of the entertainment was provided by the city of Kansas City, Mo., and the mayor entertained at least for lunch. I am sure that the gentleman did not intend to imply that there was anything in any way improper concerning the trip that this committee took to Kansas City.

I would also like to state that in my opinion it is a little different in the case of a Member of Congress than a member of a commission. However, I don't think under the same circumstances we could criticize the commission for making the trip. In the case of a Member of Congress, as the witness so ably stated this morning, he goes before the people every 2 years, and I think that the people should know what he has done, and what he has not done during this period. In the case of commissions, some Commissioners are appointed for a period of 7 years with no provision for removing them from office even if people feel that they have not conducted themselves properly. I want to correct the record in regard to this Kansas City matter.

I yield to my friend from New York.

Mr. DEROUNIAN. Perhaps he was engaged in conversation at the time when the Senator said he did not think our independent judgment was affected by this trip, and I said, "You are right." We agree that Members of the Congress should be given the same rule as the regulatory commissions because to me influence is influence, whether it is exercised by an elected representative or an appointed official.

Mr. MACK. I am glad to yield to the gentleman and he speaks for himself and does not speak for me.

Mr. DEROUNIAN. That is right.

Mr. MACK. I think there is a great deal of difference between Members of Congress and the members of these commissions.

Mr. DEROUNIAN. We can talk about that in private.

Mr. MACK. I want to clarify this point. I do feel personally that Members of Congress should abide by the same rule as the members of the commission. That happens to be my personal view.

The CHAIRMAN. Senator, thank you very much for your appearance here.

Senator PROXMIRE. Thank you very much, Mr. Chairman.

The CHAIRMAN. I hope that by all of this testimony and questions this morning that we don't lose sight of the objectives here, and forget the purposes we have here buried underneath all these other things that we could appropriately raise. What we are trying to do is to be practical and to establish something that would be workable and not put these agencies in ivory towers. No one wants to do that. Not deprive them from learning as they are required to do under the law. All they need to know is to find out the problems they regulate, not to prevent them from promoting a particular industry if it is their business, as in the aviation field, but to provide practical working standards, and some of them have pleaded the fact that what they need is guidance so that they will have something to go by. I hope that none of us loses sight of what we are trying to do here in a fair and objective way.

I want to thank you for your contribution.

Senator PROXMIRE. Thank you very much.

WHAT HUMPHREY AND KENNEDY ARE DOING FOR THE WISCONSIN VOTER

Mr. PROXMIRE. Mr. President, there has been much criticism, including some from this Senator, of the behavior of the contestants in the crucial presidential primary in my State.

What is likely to be forgotten, however, is the positive and constructive benefits of this kind of a debate on the great national issues for the people involved. In general, both Senators have been doing a marvelously constructive job of bringing the big facts on America's plight to the attention of our people.

This immense value of a presidential primary is so often overlooked that I call the attention of the Senate to two brilliantly written editorials from the Milwaukee Journal describing the campaigns of HUBERT HUMPHREY and JACK KENNEDY in Wisconsin.

The concluding paragraph of the second of these editorials summarizes the effect of this campaign in the eyes of this great newspaper:

With his opponent, Senator KENNEDY, of Massachusetts, he (HUMPHREY) is responsibly conducting the preliminaries of the great dialog that will challenge the American people until they go to the polls in November to choose their leadership for the next 4 years.

"The eyes of the Nation are upon you," these distinguished Senators are telling the people of Wisconsin.

The truth is in their words.

Mr. President, I ask unanimous consent that these two editorials be printed at this point in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Milwaukee Journal, Feb. 28, 1960]

WE TRAIL ALONG TO WATCH

These are dark winter days in central Wisconsin, the snow lies thick on the sleeping fields, the wind is raw and biting, and JOHN FITZGERALD KENNEDY, junior Senator from Massachusetts, is campaigning hard for the presidency of the United States. We trailed along to watch him.

In Columbus the pride of the Boston Kennedys ("he says some words kind of funny, doesn't he?") is dashing in and out of the bank, the barbershop and the Town Tap. In Portage, school is out and he is furiously giving autographs to excited children. In Antigo he is talking American government like a political science teacher to the high school assembly. At Merrill he is racing through factories and trying to shake hands at a plant gate.

Madison, Medford, Abbotsford, Wausau, Bloomer, Durand, Eau Claire, smiling, bareheaded, hand outstretched, there goes JOHN KENNEDY.

There are moments of deep satisfaction. Madison, Wausau, Merrill, and Eau Claire provide big, enthusiastic crowds. At Portage, Dr. C. W. Henney, onetime Democratic Congressman, introduces KENNEDY as "the next President." At Merrill, Leonard F. Schmitt, longtime progressive, primary opponent of the late Senator McCarthy in 1952, announced for KENNEDY. Walter B. Chilsen, influential Merrill editor, explains that he's Republican but hopes Democrats will vote for KENNEDY. At Abbotsford a husky farmer says "I'm with you all the way" and friends nod agreement. At Medford a woman whispers "God bless you, Senator."

But occasionally the Kennedy smile fades. The crowd at the Columbus city hall is small. Some workers flooding out of the Weinbrenner shoe plant at Merrill sidestep the waiting figure (are they anti-Kennedy or only anxious to get home to lunch?). At the Medford curling club, where the Badger State women's bonspiel is under way, the women show resentment at the political intrusion. As Kennedy moves westward toward Minnesota, Farmers Union country, the "Bible Belt" of Wisconsin, followers and newsmen hear more praise of his primary opponent, Senator HUBERT HUMPHREY, and much more talk about KENNEDY'S Catholicism as a political issue.

There are light moments, too. A whiskered old man in Columbus is insisting he is too young to vote. A teenage girl in the Portage drugstore gravely tells KENNEDY, "We're the teenage delinquent crowd." An Abbotsford questioner expounds at length: "Senator KENNEDY must do something about the new water tower at Owen." A lady correspondent from Washington gets herself locked in the school kitchen at Abbotsford, and misses the convoy back to Wausau. Card players in a Columbus tavern tell the Senator: "We said we wuz gonna go listen to yuh at the city hall when we got this game over, but I guess we're late, huh?"

What is KENNEDY saying, other than "I'm JACK KENNEDY, and I came here asking for your help"? He is commenting on current issues as reported in the news columns, talking about the significance of the April 5 primary urging young people to concern themselves with government and politics. He says over and over that the country desperately needs leadership in "the decisive sixties when all the unsolved problems of the fifties must finally be faced."

He speaks with concentration, without notes or manuscripts. Sometimes the words tumble out too rapidly. He quotes Lincoln, Jefferson, Churchill, and other historical figures, and he does it naturally. Rarely does he show emotion. Only at Abbotsford, questioned sharply about unemployment compensation "chiselers" and "rockingchair workers," does he indignantly insist that there are chiselers among farmers and professional men as well as among workers, that most Americans are not of such stripe, and that compensation, social security, and other welfare legislation are good and necessary.

He is a serious man on a serious mission. One joke in 2 days goes over big in Abbotsford: "Your greeting reminds me of what the Maine cow said to the farmers. 'Thanks for a warm hand on a cold morning.'"

Reporters ask voters how it looks: HUMPHREY or KENNEDY? And voters ask reporters. Certainly no one knows. There are indications that people are listening at last to the candidates. Republican leaders say their people will invade the Democratic primary. No one will know until the day after election, if then, who is helped or hurt by straying Republicans or by the religious issue.

There is current criticism of presidential primary elections and of the exhausting, grassroots campaigns they force upon busy, important men. The Journal has expressed doubts about this system. Nevertheless, it is an inspiring experience and a lesson in democracy to stand in the high school gym at Abbotsford (pop. 1,013) and hear the like of the Senator from far-off Massachusetts—candidate for President—say in all earnestness to some 50 voters and 200 students:

"This isn't an exercise or a game. This is the lifeblood of the American way. This is a most important part of the system by which the American people pick their President."

[From the Milwaukee Journal, Mar. 20, 1960]

WE TRAIL ALONG TO WATCH—II

The main building of the American Motors Corp. plant at Kenosha is 9 blocks long. HUBERT HORATIO HUMPHREY bounces every foot of it and then some. He is in and out of the two moving lines of Ramblers (1,185 this day). He's dodging accessories bobbing overhead and fork trucks darting by. He's reaching up to decks and down to pits to shake hands.

The Minnesota Senator hands out cards (with the Braves' 1960 schedule) urging a Humphrey vote at the April 5 presidential delegate election. Occasionally he is heard to mutter, "This is wonderful." Whether it's the many hands he finds to shake or the magic of the assembly line no one asks.

Now it is night and HUMPHREY (blue coat, gray fedora) is stationed under the bright Woolworth sign at 57th Street and 6th Avenue in downtown Kenosha. Shoppers crowd by and HUMPHREY'S outstretched hand misses but few of them. ("You have to shift your grip every time; even so, my little finger is a wreck.") This time, for the women, the card carries his wife Muriel's recipe for beef soup. ("It's a dandy; your husband will like it.")

Early morning, the sun is edging out of the Lake Michigan vapors. The Greyhound bus pulls up at the main gate of the strikebound J. I. Case Co. at Racine. Out pops HUMPHREY. Out pops Joe Glazer, troubadour of the labor movement, and his guitar. Glazer sings: "We're Fighting for a Contract, We Shall Not Be Moved." HUMPHREY and 39 pickets mumble along. At a breakfast of labor leaders at the Racine Labor Center he mentions the Case strike and adds: "No candidate in either party has a better voting record in behalf of labor."

The bus stops in bright warm sunshine in Burlington. Humphrey is up and down the streets, in and out of the Echo Inn, the Coffee Cup, Tobin's and the Rexall drugstores. ("I never miss drugstores, I'm a druggist myself.") Then three blocks to the National Tea store. ("The butcher wants to meet me, butchers are important in politics, they talk to all the women.") In front of the soups, farmer Orville Ihrke on route 2 explains gravely that he came from South Dakota, knows "Andrine" and is all for Humphrey. "Andrine" is Humphrey's Aunt Andrine Grimes of Lily, S. Dak. ("It's amazing how many relatives and friends from South Dakota and Minnesota I meet in Wisconsin—last night an old friend of dad's was in the crowd.")

Now Delavan. As usual, the Humphrey campaign is running late. A brief stop is scheduled at the State school for the deaf. The children are at lunch. Humphrey insists on shaking hands with all 132. He quickly learns a few sign language symbols and uses them to his delight and that of the children. The Senator's eyes are misty as he departs and, out in the yard, he warmly hugs the small boys who cluster around him.

The driver has fixed a reclining seat in the bus. "The Senator won't spend 5 minutes there," chortles an aide. HUMPHREY doesn't. He's advising aides what to do at the next stop, or scolding about their wastfulness with literature and campaign buttons. He's announcing how next week's tour will be more efficient. ("There'll be an advance car and a trailing car.") He's talking with your wandering editorial writer about congressional progress, outlook for the Geneva disarmament conference and Nikita Khrushchev. ("We've got to get over the idea that he's just a vodka drinking fat boy.") He's musing out loud: "I love small towns; I'll bet I've campaigned in every small town in Minnesota." He's bantering or telling some anecdote.

Like the one about the pig sign in front of the Humphrey Brothers drugstore in Huron, S. Dak.: "We decided to remodel. The pig sign, advertising cholera serum, had been there since dad started the business. Brother and I said the pig was a disgrace and had to go. Dad said this would be a terrible mistake, the farmers wouldn't know how to find the store. We won out. The pig went. And so did some of our farm business. So the pig went back, big as life. Only now it's in neon lights."

Someone called HUMPHREY a human dynamo. It's a good description. He's first of the party up in the morning, last to bed at night, first out of the bus.

His speeches, chronically too long, have been trimmed for this campaign. He has eliminated (usually) the triple explanation, the multiple description, the "this suggests another subject." He hates prepared texts. His impromptu speeches have emotional and political bite. Still, he is at his best in smaller groups, where flamboyant oratory does not overwhelm the man's intensity and conviction.

His attack is the broadside variety. ("NIXON and company will give us a snow job that will make these Wisconsin blizzards look like tropical breezes.") His platform humor is strictly Midwest. ("Khrushchev treats us like Grandpa Buck used to treat his chilblains—first he put his foot in hot water, then cold water, then he did it over and over again.")

HUBERT HUMPHREY is fundamentally a grandchild of prairie populism, a son of the great depression, an apostle of the New Deal. ("I'm an idealist, a progressive, a liberal.") By nature, by background, he is aiming much of his current campaign at workers, farmers, and the many who consider themselves neglected or ill treated by society or Uncle Sam. (Said the old man in Jackett's bar at Delavan: "I've been here 42 years, never made enough to get out, wonder what HUMPHREY will do for me.") But the senior Senator from Minnesota is also talking seriously and knowingly about foreign policy, disarmament, the missile gap, national growth, and other major problems of our times.

With his opponent, Senator KENNEDY, of Massachusetts, he is responsibly conducting the preliminaries of the great dialog that will challenge the American people until they go to the polls in November to choose their leadership for the next 4 years.

"The eyes of the Nation are upon you," these distinguished Senators are telling the people of Wisconsin.

The truth is in their words.

LEASING OF PORTION OF FORT CROWDER, MO.—CIVIL RIGHTS

The Senate resumed the consideration of the bill (H.R. 8315) to authorize the Secretary of the Army to lease a portion of Fort Crowder, Mo., to Stella Reorganized Schools, R–I, Missouri.

Mr. JAVITS. Mr. President, I am a sponsor of the amendment which is before the Senate, with the Senator from Pennsylvania [Mr. CLARK] and 11 other Members. I think it is so important to the issue now before the Senate that I am pleased we have had the opportunity to discuss it in the Senate, and I am glad the purpose of the amendment has been explained so fully. I hope very much that those who are opposed may also find whatever holes they think are in it and give us an opportunity to answer their points.

I realize we shall probably be faced with a motion to table. I hope very much that motion will not succeed, but that the Senate, because I feel this is a proposition which should be voted upon on its merits, will support the amendment on its merits.

I make that statement for this reason, Mr. President. Let us remember that the referee plan came from the Attorney General. It was his plan. It is essentially the administration's thought on how we can more nearly assure the voting right to those anywhere in the country—and particularly those in that area where the Civil Rights Commission found, in a most authoritative way, by three of its members from the North and three of its members from the South—and let us never forget that fact—that the voting right was being denied to those entitled to it.

Mr. President, I think there ought to be written, in letters of fire, here on the floor of the Senate, one sentence from page 134 of the report of the U.S. Commission on Civil Rights, namely:

> Our investigations have revealed further that many Negro American citizens find it difficult, and often impossible, to vote.

And then the findings of fact on page 138, where the Commission stated:

> The Commission finds that the lack of an affirmative duty to constitute boards of registrars, or failure to discharge or enforce such duty under State law, and the failure of such boards to function on particular occasion or for long periods of time, or to restrict periods of function to such limited periods of time as to make it impossible for most citizens to register, are devices by which the right to vote is denied to citizens of the United States by reason of their race or color.

Mr. President, it seems to me the quality of indignation has died and has been lost if those words do not rouse the Senate and the House to passage of an effective bill to assure that this cannot and shall not happen in these United States.

And so, Mr. President, let us remember that the plan with which we were faced was the plan of the Attorney General. It was not God-given and omniscient. It was the best the Attorney General could devise.

I, together with others in the field, considered the Attorney General's plan perfectly constitutional, but we did feel, in view of the fact that it was tied in with judicial proceedings and was a part of judicial proceedings, that its particularized application and the possibilities of delay which ensue in court proceedings, of which the referee plan would be a part, demanded some other, more expeditious way of seeing that there could register and vote thousands and thousands of citizens who had been disenfranchised as the Civil Rights Commission found they had been.

Mr. President, this is a problem which the Senator from Pennsylvania [Mr. CLARK], I, and others interested in this field did not create. This is a problem of decades—not of years, but of decades—of discrimination against Negro citizens by virtue of their color.

So when we computed the percentage of whites that were registered in Southern States and the percentage of Negroes that were registered in Southern States, we came up with the astounding difference of 1,800,000 American citizens who were not registered in the Negro group, who would have been registered had they had the same percentage of registrations as the white group.

Mr. President, they may not choose to register, but at least they should have the opportunity to do so. The Civil Rights Commission found clearly that they were denied the right to do so under color of State law, and notwithstanding the oath that every official takes to obey the Constitution of the United States.

Under those circumstances, therefore, many of my colleagues on the other side of the aisle—and let us assume that we on this side of the aisle were loyal to the administration's proposal, the referee plan—a large and distinguished group of our colleagues on the other side of the aisle had other ideas, and they said, "Let us go back to the Civil Rights Commission's own prescription for this difficulty which it itself found, and that is the appointment of Federal registrars by the President of the United States as the way in which large-scale registration, and therefore large-scale voting, could be accomplished." That would be so not because there would be wholesale qualifications where qualifications were not deserved. The law is very clear that it is State qualifications which apply, and not Federal qualifications. The effort proceeded on the proposition that the wrong had been so widespread and long enduring that it took a remedy greater than that which was offered to us by the Attorney General.

Therefore, that group, and others on this side of the aisle with a like mind, presented a prescription to the Senate for that purpose, the plan of the Civil Rights Commission. The Senate in its wisdom determined to turn that down. Whether we could have had 8 or 10 or 15 more votes if other Members of the Senate who were absent had been present is an academic question. The fact is that a majority of the Senate turned the proposition down. Therefore, we came to the judgment that we should make this proposal before we came to the regrettable conclusion that there was no other alternative than the referee plan—which is a limited alternative. Indeed, I read the words of my colleague from Pennsylvania [Mr. CLARK] on that subject, wrung from his heart, because this is a subject on which we feel deeply. He said if he had to do it, if that was the only alternative, he would vote for the referee plan with a heavy heart.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. CLARK. I thank my friend for his kind words. I think I said at the time that if I were faced with the alternative of voting for a reasonably good referee bill or no bill at all, I would feel compelled to vote for a referee bill; but I did not then say, and I do not now say, if we were faced with a weak and watered-down referee bill which required Negro citizens to go back and again face the registrars, I would vote for it. I have grave doubts whether I would vote for that kind of bill.

Mr. JAVITS. I concur with what my colleague has said. Those were his

words, and I am looking at the record of what he said, at page 5745 of the RECORD for March 16, 1960.

We therefore felt it our duty to try to bring before the Senate, almost as a last resort, yet another proposal of the most moderate and conservative character, which would yet give this opportunity for the registration of the large numbers of citizens who are involved and at the same time not do away with the referee proposal.

For this purpose, Mr. President, there were delegated, from the Republican side of the aisle, three of our number who are lawyers by profession, and from the other side of the aisle also three Senators who are lawyers by profession. We got together and did our utmost to come up with some proposal for the Senate which would at least go some way. If it could not go the way of the registrar plan, which, I repeat, is the best plan, it could at least go some way toward dealing with the very grave problem of the very large number of people who have to be registered if justice is to be done.

We came up with the amendment which is sponsored by this group of Senators. I should like to read these names. It is not only sponsored by the Senator from Pennsylvania and myself, but also by the Senator from Vermont [Mr. AIKEN], the Senator from Alaska [Mr. BARTLETT], the Senator from New Jersey [Mr. CASE], the Senator from South Dakota [Mr. CASE], the Senator from Oregon [Mr. MORSE], the Senator from California [Mr. KUCHEL], the Senator from Wisconsin [Mr. PROXMIRE], the Senator from Michigan [Mr. MCNAMARA], the Senator from New Jersey [Mr. WILLIAMS], and the Senator fron Pennsylvania [Mr. SCOTT].

Mr. President, I do not think there has been another amendment before the Senate as controverted as this one—we have had amendments which have had practically unanimous votes—which had as much sponsorship as this particular solution, which seemed even to very conservative Senators to be a reasonable effort to meet the exigency posed for us by the report of the Federal Civil Rights Commission.

Mr. President, I emphasize that to the Senate for the reason that this is the best we have been able to devise. Members of the Senate who favor getting this job done, when they read the RECORD tomorrow, should bear in mind that we have no other alternative to offer them. This is it. If they do not approve of this proposition we cannot offer them any other alternative except the straight voting referee plan, and that, in my view—and I think in the view of all of us on the civil rights side—is inadequate to the purpose. We may have to take it if even it has any vestige of effectiveness when we get through with the legislative process, as the Senator from Pennsylvania [Mr. CLARK] has said, but it is inadequate to the broad purpose of giving an opportunity for registration to the tens of thousands of people who for all practical purposes have been disfranchised.

Mr. President, why is this a conservative alternative? It is because it turns on the fulcrum of a decided case. Let me repeat: It turns upon the fulcrum of a decided case. It is completely on the other side of the road from the registrar proposal, because the registrar proposal would turn upon an executive decision by the President. Under the registrar proposal, if the President decided there was a pattern or practice of discrimination in a certain area then the President could appoint the registrar. Under the amendment offered by the Senator from Pennsylvania and myself, if in a case there was evident a pattern or practice of discrimination there would result a finding of fact and law contained in the decision in the court which would touch off the possibility of the appointing of a Federal enrollment officer.

Mr. President, such a case might be started by the Attorney General himself, or it might be started by an individual. The Attorney General might intervene in such a case. Such a case would be limited to the area in which the discrimination occurred. In our opinion, the most convenient area for the administration of a plan of this kind is a county or a congressional district.

Mr. President, let me emphasize that the touchstone of anything to be done under the amendment we have offered is a decided case—a decided case which finds a pattern or practice of the deprivation, on the grounds of race or color, of the right to register or to vote in any election for individuals in a certain community.

Mr. President, if there is such a decision, then we will have every element of a judicial finding of fact under which we will have a right to bring into action the 15th amendment and the idea of appropriate legislation under the 15th amendment for the purpose of making it effective.

This question of constitutionality of what we are about to do, Mr. President, it seems to me, is settled beyond peradventure of a doubt by the most recently decided case of United States against Raines, the decision having been handed down on February 29, 1960. Mr. President, it seems to me crystal clear that a quotation from that decision in the most explicit terms makes constitutional the amendment which we are proposing, when the decision says—and I quote from page 7 of the decision:

> And as to the application of the statute called for by the complaint—

That is, the 1957 Civil Rights Act—

> whatever precisely may be the reach of the 15th amendment, it is enough to say that the conduct charged—discrimination by State officials, within the course of their official duties, against the voting rights of U.S. citizens, on grounds of race or color—is certainly, as "State action" and the clearest form of it, subject to the ban of that amendment, and that legislation designed to deal with such discrimination is "appropriate legislation" under it. It makes no difference that the discrimination in question, if State action, is also violative of State law.

Then the Court goes on to nail that down and copper rivet it, to say that one does not have to even exhaust within the State all of his administrative remedies. The Court says—and again I quote from the same page of the opinion:

> The argument is that the ultimate voice of the State has not spoken, since higher echelons of authority in the State might revise the appellees' action.

The appellees in this case are the registrars:

> It is, however, established as a fundamental proposition that every State official, high and low, is bound by the 14th and 15th amendments (see *Cooper* v. *Aaron*, 358 U.S. 1, 16–19). We think this Court has already made it clear that it follows from this that Congress has the power to provide for the correction of the constitutional violations of every such official without regard to the presence of other authority in the State that might possibly revise their actions.

Mr. President, it is rare that we get so clear a declaration from the Supreme Court of the United States, in the very essential facts, at the very time of the debate upon proposed legislation of this kind, that proposed legislation is constitutional.

I do not think, Mr. President, it can be seriously argued by anyone, in view of this decision, whatever may be the opinion of the Attorney General or others, that what we are seeking to do is anything but absolutely constitutional.

Mr. President, to buttress that proposition, if it needs buttressing—it already comes from the highest authority in the land—we have the testimony of the Attorney General of the United States before the Committee on Rules and Administration, February 5, 1960. The Attorney General said:

> The Constitution does not leave the Government established by it powerless to act effectively to eliminate racial discrimination in voting. Section 2 of the amendment expressly confers upon Congress power to enforce the prohibition against State-supported racial discrimination in elections of any kind, both State and Federal.

Mr. President, it seems to me that that again is exactly to the same effect as the Raines case decision.

Mr. President, because this, with all of us, has been a studious labor, a labor in which we have tried to get the finest thinking in the United States on this subject, a group of us went to the trouble of enlisting the aid of a whole group of law school professors at Yale Law School and the Law School of the University of Pennsylvania. The professors also came up with the absolute finding of constitutionality of proposed legislation combining, as we are combining in our amendment, the two ideas of an official appointed on the executive level and an official appointed by the court, an official referee, both of which are contained in the amendment.

Mr. President, we make it very clear that once the finding is made that there is a pattern or practice of discrimination on the grounds of race or color, invoking thereby the 15th amendment, there certainly can be no question about the propriety of that finding made in a case, and the Congress may adopt an appropriate remedy applicable to all elections, State and Federal.

Mr. President, all these law professors find very clearly that this is an entirely

appropriate remedy; that is, the provision which we have for the appointment of an official either by the executive department or by the court to deal with this question of registration, where, by color of law, there has been a default on the part of State officials.

Mr. DIRKSEN rose.

Mr. JAVITS. Mr. President, I yield to my colleague from Illinois, with the understanding that I shall not lose my right to the floor, and I ask unanimous consent that I may do so.

The PRESIDING OFFICER (Mr. WILLIAMS of New Jersey in the chair). Is there objection to the request of the Senator from New York? The Chair hears none, and it is so ordered.

Mr. DIRKSEN. Mr. President, will the Senator yield to me?

Mr. JAVITS. I yield.

Mr. DIRKSEN. I should like to read into the RECORD, in connection with the pending amendment, a letter which I have received by hand today from the Attorney General. The letter reads as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 22, 1960.

HON. EVERETT M. DIRKSEN,
U.S. Senate, Washington, D.C.

DEAR SENATOR: You have asked for my comments upon the Clark-Javits amendment (3–11–60—B) to section 3 of your amendment (2–24–60—I) to H.R. 8315. Essentially, the Clark-Javits amendment would combine a voting referee proposal with the so-called enrollment officer procedures proposed by Senator HENNINGS (3–10–60—F).

Supporters of the Federal enrollment proposal contend that it is a stronger measure than the administration's referee proposal. This is not so. As a practical matter, it would be worthless. It is for that reason that the administration is strongly opposed to it.

The defects of the Federal enrollment proposal cannot be avoided simply by adding the proposal to the voting referee plan.

Stated very simply, the Federal enrollment proposal would be totally ineffective, except in cases of voluntary compliance by State officials, because it does not provide any practical method of enforcement. It would provide the Negro with an opportunity to have his name enrolled by a Federal enrollment officer, but it does not provide any effective way to insure that State officials will allow the Negro to vote.

It provides that when a State election official refuses to honor a Federal enrollment certificate and denies the Negro the right to vote, a suit for an injunction may thereafter be started by the Attorney General on behalf of those who have been deprived of the right to vote. Such equitable relief would be of no value, because by the time the lawsuit was concluded the election would be over.

The act by the State officials of refusing to honor a certificate of the enrollment officer would not subject them to actions for contempt of court, for they would not have disobeyed an outstanding injunction.

Nor does the fact that the officials would be subject to criminal penalties breathe life into the Federal enrollment proposal, because, as I have stated on many occasions, criminal remedies in this field are of little or no value.

By way of contrast, under the voting referee proposal, there would be an outstanding court order requiring State officials to permit Negroes named in the order to vote. Any failure to comply with this order would permit the court to proceed immediately to hold them in contempt and impose a sentence of 45 days in jail or $1,000 fine.

I should like to use this opportunity again to emphasize that it is not enough, as the authors of the Clark-Javits amendment apparently believe, to pass a bill that simply assures Negroes of the right to register.

In an apparent failure to appreciate this simple truth, the authors of the Clark-Javits amendment would also emasculate the voting referee proposal.

I would particularly call attention to subsection (b)(2), page 3, of the Clark-Javits amendment, which provides that an order declaring an applicant qualified to vote "shall become effective 20 days after the issuance of such order and notice thereof to the Governor of the State, unless any person named therein shall have been registered by appropriate State officials in the intervening period, in which case the order may be vacated on application duly made as to the registration of such person."

Such a provision emasculates the voting referee proposal and would make a farce of any bill which included it. In practice, it would mean that after a Negro has applied to the Federal court and has proven his qualifications before the judge or a referee and the court has issued an order certifying him as qualified to vote, a State official could completely wipe out the binding effect of that court order simply by placing the Negro's name in a registration book. Once this was done, and the court order was vacated, State election officials would be under absolutely no compulsion from Federal process to permit the Negro to vote. It is the right to vote, and not merely the right to register, that the 15th amendment of the Constitution guarantees to the Negro citizen.

To summarize, then, the Clark-Javits proposal suffers from a fatal illness—it cannot be enforced. It is simply an enrollment scheme providing no guarantees that the Negro will be permitted to vote not now contained in the Constitution and present laws. If added to the voting referee proposal of the administration, it would not only clutter it up with worthless provisions, but would seriously weaken it.

With kind regards,
Sincerely,

WILLIAM P. ROGERS,
Attorney General.

I think it can be taken from that that the Attorney General believes that the proposal now before us would not only be worthless in some respects, but would, in effect, weaken the so-called referee proposal with which we have been dealing, and which has been approved by the House of Representatives.

I thought, in fairness to my distinguished friend from New York and my very esteemed compatriot from Pennsylvania, that this letter should be read into the RECORD at an early time in the proceedings today, so that the letter may be available.

Having now deposited it on the desk for the purposes of the RECORD, I have made it subject to examination by any Senator who cares to look at it.

Mr. CLARK. Mr. President, will the Senator yield for a brief comment?

Mr. JAVITS. I yield.

Mr. CLARK. I promise not to tear it up after it reaches the desk. [Laughter.]

Mr. DIRKSEN. Mr. President, I think the Attorney General makes it abundantly clear that he has no high estimate of the amendment which is pending; so I earnestly hope, as I have stated heretofore, with my fondest respect for the authors, that when tomorrow we finally get around to disposing of this amendment by way of a vote on a motion to table which I shall make, the motion to table will be favorably considered by the Senate.

Mr. JAVITS. Mr. President, I am very grateful to my colleague from Illinois for giving us notice of the opposition of the Attorney General to this proposal, of which we were well aware.

I should like to state also that I think the words used by the Attorney General could be reversed. He calls this proposal worthless and ineffective. I say, with all respect, that I must reject the words "worthless" and "ineffective" used in the opinion, because it fails to take account of the language of our amendment, and it fails to take account of the fact that we have added a revision to our amendment which is contained in the House bill, and which provides exactly for the contingencies of delay in the event that an application is filed in respect of an election so that the applicant may vote in that election. This particular amendment occurs at page 6, line 16, of our amendment, and, as I say, carries over a provision which is now incorporated in the referee plan in the House bill. It reads as follows:

(10) Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case, the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

So that we give the court full power to act. I believe that the Attorney General and the Senator from Pennsylvania and I, as lawyers, and all our other colleagues, feel that there is ground here for a legitimate difference of opinion. We also feel that does not necessarily invalidate what we are trying to do. It depends on what is contained in the amendment, and what the text of it may mean.

As to the first point which is made, and which I believe is very important, let us remember that what we are doing is merely carrying over the Attorney General's own previous amendment for the appointment of referees. All we have done is added to it a part which the Attorney General apparently finds objectionable. All we have done is given the State an opportunity to repair what the court finds to be in dereliction, and that provision seems to be a very attractive provision in the opinion of other Senators, in that it gives the State an opportunity to repair what is contained in the decree of the court. At the same time we give an opportunity, under the amendment which I have read, to make sure that no such action will frustrate the will of the court.

I am grateful to the Senator from Illinois for giving us an opportunity to

answer the Attorney General, and what we say is not said out of disrespect to him, because he is a lawyer and he is entitled to his opinion, as we are also; but as to the objection of the Attorney General, to our amendment under which we give the State an opportunity to purge itself of the power of the injunction.

We have made it possible for State officials to purge themselves by registering the persons applying. If the court has any reason to doubt the good faith of the efforts being made in this situation—and this is the same court which has issued the injunction in the first place—if the court has reason to doubt the good faith of these officials in registering the people, the court is not obliged to vacate the injunction.

We believe that every effort should be made to give these officials the opportunity to purge themselves. That is why we have drawn this provision regarding the good faith of the State, unless the court has reason to suspect that it will not act, and in that case the court has authority to refuse to vacate the injunction.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. CLARK. Of course we will answer the Attorney General's letter at much greater length after we have had an opportunity to study it. Now we are really stating what amounts to a curbstone opinion on the letter, without having an opportunity to study it at length. We have only heard it read once. I should like to call the attention of my friend from New York to what appears to be the major point which the Attorney General has made in his letter. The Attorney General speaks about the turning back of the registered voter at the polling place after he has been registered by an enrollment officer, and he makes the point that this would not constitute contempt of court. I would like to point out that at this point there would have already been a court finding of a pattern of discrimination, issued after full adversary proceedings. The Attorney General says that contempt proceedings would not be applicable; that all that could be done would be to start an injunction suit, which would not be determined until after the election. I disagree with that point of the Attorney General.

I wonder if my friend does not agree with me that what would be done if this amendment were enacted is what is done now in every State under the election laws of the various States, which is that when a person is challenged at the polls, he has the right to go to the election court and get a temporary restraining order enforcing his right to vote, and that such an order would permit him to cast his ballot provisionally.

Mr. JAVITS. I thoroughly agree with my friend from Pennsylvania. In other words, we would be giving that person exactly the same opportunity and the same safeguard which the law allows now.

Mr. CLARK. I think that disposes of the main objection of the Attorney General, which I personally find groundless. I agree that the Attorney General is entitled to his opinion. In this instance, however, I do not believe it is a very good opinion. I wonder if my friend would not agree that since provisional voting would be permitted, the primary objection of the Attorney General to the enrollment officer procedure falls.

Mr. JAVITS. I think so. I would also point out to my colleague the point which he has already noted himself, that a person who is enrolled is permitted to cast his vote subject to challenge.

Mr. CLARK. A temporary restraining order could easily be issued.

Mr. JAVITS. Yes. I would also point out, with respect to the Federal enrollment provision, that a person in charge of the voting booth would risk running afoul of a criminal provision if he denied the opportunity afforded by this provision.

Mr. CLARK. I thank the Senator.

Mr. JAVITS. It seems to me that what we have before us is the fact that the Attorney General has stated his position, and that perhaps we should be afforded the opportunity to make more deliberate reply to it. I agree with my colleague from Pennsylvania that we should do more than just hear the letter read; that we should answer it. However, I must say that I was acquainted with the points the Attorney General makes in his argument, as they had been made to me before.

But I think it is very clear that the Attorney General believes that the best plan is the voting referee plan. What I fail to understand is why a greater opportunity than is afforded by the Attorney General's referee plan would not be equally satisfactory to those who favor providing the voting rights to which the people are entitled. In other words, what is wrong with having two strings to the bow, instead of one string, especially when we are dealing with such vast numbers as we are dealing with here? The essential argument for the Federal enrollment officer aspect of our amendment is that we are dealing in such large numbers. To keep abreast of that situation, once we open the gates to enrollment and voting by the thousands of people who have been denied, we must establish a more comprehensive approach. It will be necessary to have more of these officers than can be contemplated in the court proceeding through the appointment of a court referee.

One other argument appeals to me in this matter, which I believe is very important. If we all agree that what we are seeking is to provide the right to vote, and if there seems to be a very broad unanimity of feeling on that subject, why do we continue to lay this matter solely upon the courts? Why is the executive department, under a mandate of the legislative department, also not brought into this situation? In short, is it fair simply to say that the judiciary is to carry, as it has in the matter of school desegregation, the whole responsibility and the whole administration of the act? Many persons, indeed, argue that either limitations will be imposed in terms of very few cases and very few people affected by the enrollment, or the whole judicial system will break down, so large are the numbers involved.

As a sheer administrative matter, it is necessary to provide another way in which to act, so that the courts will not be absolutely loaded down with cases.

So we have come to the conclusion that the right plan is, for the generality of cases, to appoint a Federal enrollment officer where the hard-core resistance of a group of State officials is not involved. But where a brick wall is encountered, the referee procedure would be applied, a procedure which is related to the contempt power of the courts. In that way, the entire judicial machinery will be relieved of a tremendous burden, if the cases are really in the numbers they ought to be, considering the discrimination which has been practiced. On the other hand, we make it certain that for the hard-core cases there are voting referee provisions.

It seems to me that this is adapting a remedy to a difficulty and to the practicalities of a situation far better than the referee proposal standing by itself.

Rather than having weakened the Attorney General's referee plan, I think we have strengthened the whole proposal in terms of providing the maximum opportunity for voting to those who have been discriminated against in such large numbers—in the thousands. We have done so by providing an administrative procedure and an administrative official appointed by the President, operating in such a way as not to burden the courts. This will be of enormous help in disposing of the multiplicity of cases in which discrimination is involved. We have done so by providing for provisional voting, but giving the State an opportunity—and it may be vital in some cases—to purge itself of what the injunction provides, if the State shows the desire and the capability, in the eyes of the court, to do what the court requires by its injunction.

Finally, we have eliminated the redundant requirement for an individual applicant to go back again to the very registrar or registrars, who are not there, or who have discriminated against him, which is a feature of the referee plan of the Attorney General. That is completely unnecessary, once the court has found a pattern or practice of discrimination, because many persons will not go back, for fear of reprisals, whether economic or social.

Equity says that when an act is demonstrably futile, it need not be performed again; as, for example, where a demand is demonstrably futile, it need not be repeated. Certainly a finding of a pattern or practice of a denial of a right to register and to vote would demonstrate that a new individual demand for the right to vote would be futile.

For all these reasons, I believe the Senator from Pennsylvania [Mr. CLARK] and I and our colleagues have presented to the Senate a reasonable—indeed, a moderate—model of the right way in which to cope with the practical as well as the legal aspects of a very major problem of our time.

I would be less than true to my own conscience if I did not repeat what I said earlier: That the matter of discrimination in the field of voting, and in other fields, too—but certainly in the field of voting—beyond any question is absolutely intolerable in the face of our domestic situation and in the face of the world situation, as is evidenced by what is happening in the Union of South Africa, which is an evidence of the deep stirring which is taking place in the world.

It is up to us, not to find paliative remedies or the easiest remedies; it is up to us to find remedies appropriate to the situation. That is what I believe our amendment offers to the Senate.

Mr. ROBERTSON. Mr. President, the debate on several voting rights amendments fully illustrates the position many of us have taken upon the matter for the past month, namely, that the Senate should never undertake to write on the floor of the Senate a complicated and technical bill without the benefit of public hearings and without the benefit of a committee report. It has been difficult for Senators to know what was in a given amendment when it was called up for discussion.

For instance, last week the Clark amendment, to amend section 3 of the Dirksen bill, was called up. That amendment was debated for a day, and then it was withdrawn. The Douglas amendment was called up before any of us could even find out the difference between the Clark amendment and the Douglas amendment. After a day or more of debate, the Douglas amendment was laid on the table.

Last Friday, the distinguished senior Senator from New York [Mr. JAVITS] said he would call up, on yesterday, his amendment. It turned out that the Clark amendment, which was designated "3–11–60—B," and the Javits amendment, which is designated "3–18–60—B," were the same. But it took a good deal of study to find that out. Yet before we started debate on the Javits amendment, we found that it had again been changed, to include a section which the Senator from New York mentioned just before he concluded. So the amendment now contains a provision concerning provisional voting, a provision which has been so vigorously criticized on the House side.

It is in the same language as will be contained in the House bill.

The junior Senator from Virginia could find nowhere in his vocabulary language stronger than that used by the Attorney General of the United States in condemning the pending voting amendment—the Javits amendment. He said, as I understood the letter recently read by the distinguished minority leader [Mr. DIRKSEN], that the amendment was worthless; that it had a fatal illness; that instead of doing any good, it would undo any good that might be done by what was left of the Rogers voting-referee proposal.

The junior Senator from Virginia could not find any stronger language than that. In fact, he would hesitate to go quite so far in criticism of distinguished colleagues. Needless to say, he agrees very fully with the Attorney General that it is not a good amendment. But he also feels that the substitute proposed by the Attorney General is not a good amendment, either. Both amendments are unconstitutional.

This all illustrates, Mr. President, the difficulty we have been encountering ever since the debate started on February 15 to ascertain exactly what was before us for action, and the necessity for having the benefit of an analysis of the meaning of the language and the benefit of a well considered report by a committee of competent lawyers, such as those who serve on the Committee on the Judiciary, which is where these bills should properly be handled and reported in due time, after hearings, to the Senate.

But instead of that, we are confronted with bills and measures which are so voluminous that they have been referred to by their weight—as weighing between 5 pounds and 6 pounds—rather than by their titles; and as soon as we try to analyze one amendment or one bill, then—as has been shown in regard to the voting-procedure amendment—we are confronted with a new amendment.

The new Javits amendment, which is labeled "3–18–60–B," as amended on March 21, 1960—yesterday—would amend section 3 of the Dirksen substitute. Section 3 of the Dirksen substitue now requires the retention of voting records for 3 years. This provision would be retained in the Javits amendment; and to it would be added a court registration procedure, a voting referee procedure somewhat like the proposal of the Attorney General, and a voting registrar procedure based upon the proposal of the Civil Rights Commission, making use of what would be called Federal enrollment officers. In addition, the use of registrars would be required, although the Senator from Missouri [Mr. HENNINGS] says the use of registrars would be unconstitutional, and he says he could not accept such a provision; and the Attorney General said that the use of registrars would be unconstitutional, and said they would be worthless, and that such a provision would suffer from a fatal defect.

Mr. CLARK. Mr. President, will the Senator from Virginia yield for a brief question?

Mr. ROBERTSON. First, I should like to finish my sentence.

Mr. CLARK. Certainly; I thought the Senator had done so.

Mr. ROBERTSON. No. The sentence is a little long, but it leads up to the fact that the amendment—which we are now debating—the amendment of the senior Senator from Pennsylvania—embodies what the Attorney General said is no good and is unconstitutional. It embodies a part of the proposal of the Attorney General, but the Attorney General said it does so in a way that nullifies it; and, in addition, it still leaves in the Dirksen bill all of section 7, which is the proposal of the Attorney General.

Mr. CLARK. Mr. President, will the Senator from Virginia yield?

The PRESIDING OFFICER (Mr. WILLIAMS of New Jersey in the chair). Does the Senator from Virginia yield to the Senator from Pennsylvania?

Mr. ROBERTSON. I yield now.

Mr. CLARK. I was interested in the sotto voce remark which my good friend, the Senator from Alabama, relayed to my equally good friend, the Senator from Virginia, namely, that the Attorney General had said the enrollment procedure here proposed was unconstitutional. I wonder where and when he said so, because I have before me his letter, and in reading it quickly I do not find in it any claim by him that this proposal is unconstitutional, nor do I recall that at any time prior to writing this letter the Attorney General said that any provision of the Clark-Javits amendment was unconstitutional. I wonder when the Attorney General said it was unconstitutional.

Mr. ROBERTSON. I was mentioning the various registrar provisions which were before the Committee on Rules and Administration. When the Attorney General testified on the last day—mind you—his bill had not even been introduced; it was not introduced until a week later. Think of that. Yet it is what is claimed to be the heart of this proposed legislation, as presented by the Attorney General. On the last day of the hearing he said that all those registrar bills or amendments were of doubtful constitutionality.

Does the Senator from Pennsylvania want me to take time to read the exact language which appears in the hearings, or does the Senator challenge my statement that the Attorney General said that?

Mr. CLARK. I do not challenge the Senator's statement that the Attorney General made a passing reference to the possible unconstitutionality of registrar proposals; but I do state that I do not believe the Attorney General ever expressed a definite opinion that they were unconstitutional. It seems to me to be clear, beyond peradventure of doubt, that they are not unconstitutional, and that, instead, they are perfectly constitutional.

If the Senator from Virginia, wishes to sustain the suggestion of the Attorney General, I shall be happy to hear him argue it. But I do not understand how any lawyer who has practiced in the courts or argued appeals could assert that there is anything unconstitutional about the registrar proposal.

Mr. ROBERTSON. The Attorney General said they were of doubtful constitutionality—which was diplomatic language on his part, because some of them had Republican sponsors. That statement by him means—to me—that if I were called on, as Attorney General, to enforce them, I would feel that I would lose out before I even got started. And the Attorney General asked that they be thrown aside, and that what he proposed be considered instead.

Mr. President, I had planned to read extensively from the testimony I gave before the Committee on Rules and Administration, before the time when the Attorney General testified there. But the hour is late, and I do not now expect to do so. However, I shall turn

that testimony over to my colleague, the Senator from Alabama [Mr. HILL]; and I have marked a section where the Attorney General condemned the registrar provisions or proposals. Evidently the Senator from Pennsylvania is not too familiar with that testimony. So, for his benefit, we shall read it to him, from the record. However, it is rather difficult in a minute's time to put one's finger on the exact point, page after page.

Mr. CLARK. Mr. President, will the Senator from Virginia yield further?

Mr. ROBERTSON. I yield.

Mr. CLARK. I am reasonably familiar with what the Attorney General said. I am in disagreement with his suggestion that any registrar proposal is unconstitutional; and nothing which could be found in the testimony, which I would be happy to listen to the Senator from Virginia read, would make me think any better than I now think of the opinion of the Attorney General.

Does the Senator from Virginia regard the Attorney General of the United States as a great constitutional lawyer whose opinions are entitled to be regarded by Senators as convincing?

Mr. ROBERTSON. If the Senator from Pennsylvania will do me the honor of remaining here and listening to the remainder of my speech and will listen to the criticism of the legality of the proposal of the Attorney General, the Senator will find his answer.

Mr. CLARK. It will be my privilege to do so, Mr. President.

Mr. ROBERTSON. Mr. President, inasmuch as I have had a brief interchange with one of the sponsors of the amendment, I wish to call his attention to the following in the amendment:

> The refusal——

Mr. CLARK. Will the Senator from Virginia identify the point in the amendment?

Mr. ROBERTSON. Yes; it is on page 4, in line 3:

> The refusal by any such officer with knowledge of such order to permit any person so declared qualified to vote, to vote at an appropriate election shall constitute contempt of court.

That will be criminal contempt, will it?

Mr. CLARK. I think it would also be civil contempt. That would depend upon the circumstances.

Mr. ROBERTSON. Well, it would be contempt of court.

Let me ask the Senator from Pennsylvania whether such a person would have a jury trial?

Mr. CLARK. As the Senator from Virginia well knows, such a person would have a jury trial to the extent that he would be entitled to have one under the Civil Rights Act of 1957, but not otherwise.

Mr. ROBERTSON. Where is that set forth in the bill?

Mr. CLARK. I think that is in existing law, and it needs no additional notation.

Mr. ROBERTSON. Mr. President, I wish to point out that such a person will not get a jury trial. This measure states that he will not get a jury trial. But the sponsor of this measure himself does not know that his own amendment provides that such a person will not get a jury trial. That situation is indicative of the kind of proposal we are asked to accept.

Let the Senator turn to page 9. He will not find there that such a person will get a jury trial, because that part of the amendment relates the contempt penalty back to the 1957 act, which denies such a person a jury trial if the fine is not over $300 or if the punishment is not more than 45 days in jail.

Mr. CLARK. Mr. President, will the Senator from Virginia yield?

Mr. ROBERTSON. I yield.

Mr. CLARK. The provision to which the Senator from Virginia has referred on page 9 occurs in the section of the amendment which deals with the appointment of Federal enrollment officers, and is entirely independent of, and has no reference to, the provision on page 4.

Mr. ROBERTSON. I am sorry; I had something else in mind at the moment. It is on page 11, in line 4.

Mr. CLARK. If the Senator refers to page 11, line 4, I am afraid I do not understand what his point is. I do not believe the matter there is pertinent to what we are discussing. Perhaps I am looking at the wrong place.

Mr. ROBERTSON. That is the trouble. If the patron of the proposal does not understand it, how does he expect the Senate to approve it? But I will point it out to the Senator. On page 11, line 4, we find this:

> Any proceeding brought under the provisions of this section shall be subject to the provisions of part V of the Civil Rights Act of 1957.

That is the part which denies the jury trial. That is where it is unconstitutional.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. ROBERTSON. Yes.

Mr. CLARK. The Senator was reading from page 11, lines 8 to 10, which was why I did not follow him. I am quite content to stand on the sentence he has read. I think it is quite appropriate and all right.

Mr. ROBERTSON. It is appropriate, but I am showing how difficult it is for anybody to understand what we are actually considering here.

Here on page 4, a certain action is, of itself, made subject to contempt. A person could have a civil action. But what we are contemplating here is criminal contempt and criminal punishment. That is not found until we get over to page 11. That is where a jury trial is denied. That is the reason why the Senator from Virginia spent 4½ hours on February 28 discussing why the Attorney General's proposal is unconstitutional in many respects. One of them is that a person is denied the right of trial by jury in criminal contempt proceedings.

Mr. CLARK. Mr. President, will the Senator yield further for one final observation? Then I shall not detain him further.

Mr. ROBERTSON. I yield.

Mr. CLARK. I point out again that the provisions on page 11, to which my good friend has referred, deal with the Federal enrollment officer section of the amendment and have no bearing on the provisions of page 4, which deal with an entirely different procedure, having to do with voting referees. Therefore, I suggest again to my friend that his reference is not pertinent. I thank him for yielding.

Mr. ROBERTSON. Mr. President, we do not get very far when we cannot agree what the facts in the bill are. The section in lines 4 to 6 on page 11 relates to the previous provisions, and it includes the provision on page 4. Therefore, I say it relates back to the act of 1957; and in the act of 1957 a jury trial is denied in criminal contempt cases if the fine is less than $300 or the penalty is less than a certain type.

Mr. President, since my interchange with the distinguished Senator from Pennsylvania, my attention has been called to the fact that I have been quoting from the Javits-Clark amendment of March 18 to H.R. 8315, Calendar No. 924; but, confusion worse confounded, they submitted another one on March 21, with which the Senator from Virginia has not caught up. When the Senator from Virginia quoted from the amendment of March 18, it was a different line and page number from the one from which the Senator from Pennsylvania was reading, and therefore we could not get together on what the effects in the amendment were, because the Senator from Virginia was quoting from the amendment of March 18.

The amendment of March 18 was the same as the amendment of the Senator from Pennsylvania of the 11th, subject to the change on the 21st, and in the meantime we had an amendment by the Senator from Illinois [Mr. DOUGLAS].

In the opinion of the Senator from Virginia, about all that most of the Senators will know about the pending amendment will be the letter written by the Attorney General, and put in the RECORD today, stating that the amendment is worthless, has a fatal illness, and will do more damage than good. That is the essence of what they will know about the amendment.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. ROBERTSON. I yield.

Mr. CLARK. In a most friendly spirit, I should like to point out to my good friend from Virginia that, in relation to the language respecting the provision under consideration between him and me, the only changes made between the 18th of March and the 21st of March were in two matters which do not affect the discussion between us.

If the Senator will read the amendment going back to the 11th of March, he will find in this respect the language was identical in both the 18th and the 21st drafts.

Mr. ROBERTSON. The Senator from Virginia had a mimeographed copy of the changes made in the Javits amendment, which he thought included all the changes made. The Senator from Virginia did not know the amendment had been reprinted and renumbered. Hence, the Senator from Virginia quoted

from the copy which he thought was the only copy to identify the references.

Mr. President, the new Javits amendment, the Javits amendment labeled "3–18–60—B," as amended on March 21, 1960, would amend section 3 of the Dirksen substitute. Section 3 of the Dirksen substitute now requires retention of voting records for 3 years. This provision would be retained in the Javits amendment, and to it would be added a court registration procedure, a voting referee procedure somewhat like the Attorney General's proposal, and a voting registrar procedure based upon the proposal of the Civil Rights Commission, making use of what would be called Federal enrollment officers.

The registration procedures in the Javits amendment appear to be based primarily upon the 15th amendment.

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

In each of these procedures, the initial finding would be that "under color of law or by State action any person or persons have been deprived on account of race or color of the right to register or to vote at any election." The next step would be a finding that "such deprivation is pursuant to a pattern or practice."

The only further proof which need be made in any of the three procedures established by the Javits amendment is that the applicant is of the same race or color as that involved in such deprivation, and that he is qualified under State law to vote.

Under the Javits amendment, it is not necessary for each individual applicant to show, or for the court, voting referee, or Federal enrollment officer to find, in each case that the applicant himself was deprived of rights under the 15th amendment. In other words, there is no need of proof or finding that the applicant himself has been or might be deprived of his rights under the 15th amendment.

Under the Javits amendment, it would make no difference if evidence were presented to the court to show that the applicant himself was not deprived of any rights under the 15th amendment. If, for instance, he had never applied to register or to vote, or if he had applied and had been turned down only because he was too young to vote, this would be immaterial. Evidence to this effect or a finding to this effect would make no difference.

This is what is meant by an irrebuttable presumption. It changes a presumption of fact, a shifting of the burden of evidence, into a rule of law where the legislative finding that the world is flat makes irrelevant and immaterial testimony to the effect that the world is round.

The proceeding qualifying the individual applicant to register or to vote is based upon the 15th amendment only through the use of the irrebuttable or conclusive presumption that because one or more violations of the 15th amendment have occurred in an area with respect to persons of a particular color or race, and this was pursuant to a pattern or practice, then all persons of the same color or the same race have been or would be deprived of the right to vote in violation of the 15th amendment.

The need for proof of violations of the 15th amendment with respect to the individual voter, the need for individual findings with respect to the individual voter or, on the other hand, the use of a conclusive or an irrebuttable presumption to supply this proof of violation of the 15th amendment with respect to the individual voter, has been the subject of much discussion, and I should like to take it up first.

Mr. President, the Washington Post and Times Herald in its lead editorial last Friday on the subject of "Referees versus Registrars," makes the following statement:

> Could not the two proposals—the referee and registrar proposals—be combined so as to continue the referee concept, but to instruct referees to enroll applicants without the rigmarole of individual findings when a pattern of discrimination has been found? Some such procedure would make the plan a lot more palatable to those whose concern is the extension of voting rights to all qualified citizens with the least litigation or delay.

The writer of this editorial either is not aware of the reason for "the rigmarole of individual findings," or he does not attribute any importance to the reason. I should like to try to spell out again for the benefit of Senators who might be misled by this editorial the reason for and the need for individual findings showing a violation of the 15th amendment with respect to each would-be voter whom the referee might be asked to register.

The reason is simple. Individual findings with respect to individual voters are needed in order to make the proceeding constitutional. They are needed first in order to satisfy the requirement of article III of the Constitution that Federal courts handle only judicial proceedings. Second, they are needed in order to satisfy the constitutional requirement that a proceeding based on the 15th amendment is, in fact, based on the 15th amendment and not on an irrebuttable presumption which may or may not bear any relation to the facts. Third, they are needed in order to satisfy the fundamental requirement of due process, that a State election official or other officer who is being charged with discrimination under the 15th amendment against a particular individual be given a chance to tell his side of the story.

One whose sole interest is the least litigation and delay, one whose sole interest is in speedy conviction of every accused, naturally finds the procedural requirements of the Bill of Rights a real handicap. The requirement of indictment by a grand jury delays proceedings, and sometimes grand juries will not indict. The requirement of trial by jury also delays proceedings, and sometimes petit juries will not convict. The requirement that a defendant be permitted to have counsel delays proceedings, because sometimes defendants' lawyers raise legal or constitutional questions on behalf of their clients. And again the requirement that a defendant be authorized to call witnesses may delay proceedings.

But these procedural rights are fundamental to the basic idea of judicial proceedings and due process. If the referees are to be placed in the judicial branch, which was created under the Constitution to exercise the Government's "judicial power" in "cases and controversies," then we must not abandon judicial procedures and due process in the sole interest of speed.

A particularly vicious aspect of the referee proposal, which I am surprised that the writer of the Post editorial has not appreciated, is the conclusive and irrebuttable presumption on which the administration proposal is based. The administration proposal as set out in the Dirksen substitute, starts with a deprivation of voting rights on account of race or color, in violation of the 15th amendment, with respect to one or more persons—and note that the proposal says a violation with respect to one person is sufficient—combined with a "pattern or practice."

On the basis of these findings, a conclusive or irrebuttable presumption is made that every person of the same race or of the same color in the area has been deprived of his rights under the 15th amendment. The revised administration proposal, the proposal of the Senator from New York [Mr. KEATING] marked "3–2–60—A" would require the applicant to show that he had been denied the opportunity to register or qualify to vote or had been found not qualified to vote, and the conclusive or irrebuttable presumption would supply proof of the fact that the reason for this deprivation or finding of lack of qualification was his race or color. The Javits proposal omits any finding of denial or refusal to register by a State official. The Javits amendment, "3–18–60—B," would use a conclusion or irrebuttable presumption, based upon one violation of the 15th amendment on account of race or color, and a finding of pattern or practice, to supply proof that there would have been a violation if an applicant of the same race or color had applied.

In *McFarland* v. *American Sugar Refining Company* (241 U.S. 79 (1916)), the Supreme Court considered a rebuttable presumption that a person systematically paying less for sugar in Louisiana than he pays in another State is a party to a monoply or conspiracy in restraint of trade. The court held that this presumption violated the equal protection and due process provisions of the 14th amendment. In his opinion Mr. Justice Oliver Wendell Holmes made the following statement:

> As to the presumptions, of course the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is "essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and

that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate" (*Mobile, Jackson & Kansas City R.R.* v. *Turnipseed*, 219 U.S. 35, 43. The presumption created here has no relation in experience to general facts (241 U.S. 79 (1916)).

And again in *Manley* v. *Georgia* (279 U.S. 1 (1929)), the court considered a Georgia statute which provided that every insolvency of a bank shall be deemed fraudulent and the president and directors shall be punished unless they rebut the presumption of fraud by a showing of care and diligence. In its opinion the court made the following statement:

State legislation declaring that proof of one fact or a group of facts shall constitute prima facie evidence of the main or ultimate fact in issue is valid if there is a rational connection between what is proved and what is to be inferred. If the presumption is not unreasonable and is not made conclusive of the rights of the person against whom raised, it does not constitute a denial of due process of law—*Mobile, J. & K. C. R. R.* v. *Turnipseed* (219 U.S. 35, 43). A prima facie presumption casts upon the person against whom it is applied the duty of going forward with his evidence on the particular point to which the presumption relates. A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repeal it violates the due process clause of the 14th amendment. *Bailey* v. *Alabama* (219 U.S. 219, 233, et seq.). Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty, or property. "* * * it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime"—*McFarland* v. *American Sugar Co.* (241 U.S. 79, 86).

In *Heiner* v. *Donnan* (285 U.S. 328 (1932)), where presumptions concerning gift taxes were under consideration, the court said:

A rebuttable presumption clearly is a rule of evidence which has the effect of shifting the burden of proof (*Mobile, J. & K. C. R. Co.* v. *Turnipseed*, 219 U.S. 35, 43); and it is hard to see how a statutory rebuttable presumption is turned from a rule of evidence into a rule of substantive law as the result of a later statute making it conclusive. In both cases it is a substitute for proof; in the one open to challenge and disproof, and in the other conclusive. However, whether the latter presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality, and the result is the same, unless we are ready to overrule the Schlesinger case, as we are not; for that case dealt with a conclusive presumption, and the court held it invalid without regard to the question of its technical characterization. This court has held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the 14th amendment. For example, *Bailey* v. *Alabama* (219 U.S. 219, 238, et seq.); *Manley* v. *Georgia* (279 U.S. 1, 5–6). "It is apparent," this court said in the Bailey case (p. 239) "that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumpion any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions" (at p. 329).

All these decisions make it clear that, aside from all legal technicalities, the effect of the creation of a conclusive or irrebuttable presumption, is to provide by legislative fiat that a fact will be presumed to have occurred, whether it did occur or not. The introduction of evidence to the contrary will not be permitted, no matter how definite and clear the evidence may be.

Under the Javits proposal, no matter how clearly it may be proved that the applicant never applied for registration or to vote, and therefore was not and could not have been deprived of his right to vote by State action or under color of law on account of race or color, no matter how clearly it may be proved that the 15th amendment does not apply to him, no finding on this point need be made and no evidence on this subject would be taken. The legislative decree will have gone forth that because there was one instance of violation of the 15th amendment, pursuant to "a pattern or practice", all persons of that race or of that color have been deprived or will certainly be deprived of their rights under the 15th amendment.

I was interested to note that another Washington Post and Times Herald editorial recently criticized the Supreme Court for what they considered reversing itself in the case of Nelson against County of Los Angeles, where the Supreme Court sustained a dismissal of an employee on the ground that he had not testified before a congressional committee. The newspaper thought that this case was governed by an earlier case where a New York statute authorizing the city to discharge employees who invoke the fifth amendment was held unconstitutional.

Would it be proper for the city of New York or for the Federal Government to enact a statute creating an irrebuttable presumption that any employee or any person, for that matter, who invoked the privilege against self-incrimination under the fifth amendment was guilty of the offenses concerning which he was being asked, and might therefore be discharged or convicted of those offenses?

The voting referee proposal involves an irrebuttable presumption that, if there has been one violation of the 15th amendment with respect to a person of a particular race or color, together with a pattern or practice, then all persons of that same race or of that same color in the area have been deprived of their rights under the 15th amendment, or would be deprived of their rights if they sought to exercise them.

I do not think that there is any "rational connection between the fact proved and the ultimate fact presumed." I think that the inference of one fact from proof of another is "so unreasonable as to be a purely arbitrary mandate." I urge Senators who are concerned with civil rights to beware of purely arbitrary presumptions and purely arbitrary mandates.

I think that the burden of proving individual discrimination with respect to each individual voter in order to make the proceeding a proper judicial proceeding, in order to give the proceeding a solid footing under the 15th amendment, and in order to satisfy the fundamental requirements of due process—instead of using an irrebuttable presumption to jump over all of these constitutional provisions—is not just "the rigmarole of individual findings." The Bill of Rights and the Constitution are not scraps of paper.

Mr. President, I should now like to turn to the second major part of the Javits amendment, the proposal for Federal enrollment officers beginning on page 7.

These officers are very much the same as the voting registrars proposed by the Civil Rights Commission. I think most of the comments I made with respect to the voting registrars when I was testifying before the Rules and Administration Committee on February 4 of this year are equally applicable to the Federal enrollment officers, though, of course, there are many differences which I should like to comment on later. Accordingly, I should like to read to the Senate from the testimony before the committee:

Constitutional and legal problems * * * would arise under plans based upon a determination by a nonjudicial body that State officials have discriminated against citizens in violation of the Federal Constitution.

That was the basis of my statement that the Attorney General meant to say he did not think the registrar plan was constitutional. That was diplomatic language. Certainly in the letter today he made very plain and explicit his additional objections.

Now I shall turn specifically to the Javits amendment, and start with subsection (b), which is labeled "Appointment of voting referees by the district courts of the United States."

I think this heading is somewhat misleading, because as I read the subsection, it seems to me that paragraphs (b)(1), (b)(2), and (b)(3) set up a procedure for registration of voters directly by the court, without necessarily involving any use of voting referees. I think that paragraphs (b)(4), (b)(5), (b)(6), and (b)(9) establish a separate and different procedure for the appointment of voting referees and the registration of voters by them, ratified by the court.

Subsection (b)(1) starts with a finding, in any proceeding under any law of the United States, that under color of law or by State action a person or persons have been deprived on account of race or color of the right to register or vote at any election. In the case of such a finding, the court on request of the Attorney General or any plaintiff must make a further finding whether such deprivation is pursuant to a pattern or practice. If this pattern or practice is found, any person of such race or color residing within the affected area shall for 1 year or perhaps more be entitled to an order declaring him qualified to vote on proof he is qualified under State law to vote. His application must be heard within 10 days. Paragraph (b)(2) provides that an order issued under paragraph (1) shall become effective 20 days after its issuance and notice thereof to the Governor of the State, unless the person affected is registered. Paragraph (b)(3) provides that an applicant so declared

qualified to vote must be permitted to vote in any election, and the Attorney General must send copies of the order to the appropriate election officers. If an election officer knowing of the order refuses to permit the person to vote, he is guilty of contempt of court.

As I indicated earlier, these proceedings start with any proceeding pursuant to any law of the United States, regardless of the nature of the proceeding, regardless of the parties to the proceeding, regardless of the relief which might otherwise be granted under the original proceeding. There is no requirement that the original parties to the original proceeding should be notified of these new applications filed; there is no requirement that the appropriate election officials who are conclusively presumed to have testified him to the court of his rights to vote must be notified; and there is no requirement that the election officials who will be ordered to permit him to vote should be notified. The only requirement is that the applicant must be heard within 10 days of its filing. The order is to be served on the Governor and the appropriate election officers, but they are given no opportunity to give opposing evidence to the court or to appeal the order. They can only accept it and carry it out subject to contempt penalties.

Paragraph (b)(4) provides that the court may appoint voting referees to receive applications to take evidence and report findings as to whether the applicant is qualified under State law to register and vote at a State election. Note that the court "may appoint" voting referees to receive and take evidence on applications. The applicant, under paragraph (b)(1) shall be entitled to an order, and the applicant shall be heard within 10 days. Note also that the only thing the referee considers whether or not the applicant is qualified under State law to register or vote.

The proceedings before the voting referee are ex parte under paragraph (b)(5); presumably the election officials are not notified of the application or hearings. When the referee has prepared his report, a copy is sent to the State attorney general and "to each party to such proceedings." The bill does not specify who are the parties to the proceedings. There is no requirement that an election official who was not involved in the original proceedings must be made a party and given notice of the referee's report, even though he may be the person who was presumed to have deprived the applicant of the right to vote, or he may be the election official who will be ordered to let the applicant vote.

The notice given to the State attorney general and parties to the proceeding will consist of an order to show cause within 10 days or less why an order should not be entered. Ten days is not much notice; and if the court reduces it, the defendants will not get much of an opportunity to give their side of the case. The bill provides in great detail just what kind of a statement of exceptions the defendant must submit and serve in order to prevent the order to show cause from taking effect.

The court may refer the matter back to the voting referee or he may decide it himself, but hearings on an issue of fact can be held only if there is "a genuine issue of material fact." The bill does not state how the court is to determine whether an issue is "genuine."

The applicants "literacy or understanding of other subjects" must be determined solely on the basis of the report of the voting referee. Even if the judges is in doubt he cannot call the applicant in and ask him questions.

All of this is a far cry from the sound judicial proceedings prescribed in rule 53 of "Rules of Civil Procedures for Referees and Masters." Under the rules of civil procedure both parties know of the reference, both parties know of the hearings before the referee, both parties have an opportunity to present their evidence through their witnesses, both parties have an opportunity to comment on a draft of a referee's report, and to take exceptions to it when it is filed. And the judge receiving the referee's report is not limited to rubberstamping the referee's report.

Paragraph (e)(II) of rule 53 provides that "the court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."

Rule 53 of the "Rules of Civil Procedure" gives the kind of notice and opportunity to be heard which constitutes due process of law and for sound judicial procedure. Rule 53 provides the kind of judicial procedures which are essential if a proceeding is to be called a case or controversy under the judicial power vested in the courts by article III of the Constitution. Too many short cuts, escaping the time-consuming restrictions of due process and sound judicial procedure, will I think lead the courts to invalidate this proposal.

On February 29, 1960, I discussed the subject of voting referee in the Senate, commenting at that time primarily on the original administration proposal contained in the Dirksen substitute amendment. I shall not attempt at this time to repeat all of the points I made then, though most of my earlier comments would apply to this new proposal.

In conclusion, I wish to comment briefly on some added features of the Javits amendment.

Both the court and voting referee provisions of the Javits amendment and the Federal enrollment officer provisions of the Javits amendment call for provisional voting by applicants. The first provision appeared on page 6 of the amendment at line 16 through 22, and these have now just been amended by the Senator from New York. The second place where provisional voting is provided for appears on page 9 of the Javits amendment on lines 2 through 10. In many States, voting machines are used, and voters are by law entitled to privacy within the voting booth. I do not believe it is possible for anyone to preserve the vote of a challenged voter cast on a voting machine, without violating the voter's right to privacy. In fact, regardless of privacy, it seems to me impossible to "preserve" the vote made by the physical gesture of pressing down levers on a voting machine.

It seems appropriate to point out that the Javits amendment provides for the issuance of court orders qualifying voters to vote, and it makes disobedience to those orders contempt of court. The actions of the Federal enrollment officers which would be created by the Javits amendment are also enforceable by civil and equitable proceedings. Injunctions may be granted in order to carry out their decisions, and it will be contempt of court to disobey these injunctions. All the objections I presented to the Senate on March 8 against depriving persons of the right to trial by jury in criminal contempt proceedings are applicable to the contempt proceedings which will be created by the Javits amendment.

In addition, the Javits amendment makes it a crime to refuse to accept a ballot from a person enrolled by a Federal enrollment officer or to interfere with or prevent him from voting.

The amendment specifically provides that injunctions shall not be denied on the ground that the acts complained of are a crime. It is not clear whether a person may be both punished by fine and imprisonment for the crime and also by fine and imprisonment for the contempt, since it would seem that the proponents of these measures take the position that criminal contempt is not a crime.

Paragraph (d) of the Javits amendment introduces a new feature on which there has been no testimony as far as I am aware.

In any suit where a person alleges that he has been deprived on account of race or color to register to vote at any election, the court must notify the Attorney General and must permit him to intervene as a party to present evidence, to argue, and to recommend relief. This would apply to apparently the civil actions where the plaintiff is seeking money damages for relief for deprivation of rights. It seems inconsistent with ordinary judicial processes to have such a suit virtually taken over by the Attorney General for such purposes as he may see fit. I know of no testimony which provides a factual basis for this new provision.

Section (f) of the Javits amendment, which is copied from section 7 of the Dirksen substitute, provides that in injunction proceedings under the 1957 act, the State may be joined as a party defendant if an official of the State is alleged to have committed the deprivation and, if the official has resigned, the proceeding may be started against the State.

I hope my distinguished colleague from Pennsylvania [Mr. CLARK] will take due note of the following:

In *U.S.* v. *Alabama* (No. 398, October term, 1959), which I understand will be argued in the Supreme Court next month, the Attorney General is contending that the 1957 act already permits a State to be made a party. The district court held that the 1957 act did not authorize suits against States as such, and

the Court of Appeals for the Fifth Circuit unanimously affirmed this ruling.

Ordinarily, it is poor policy to amend a statute to accomplish what one is seeking to do by interpretation in pending litigation. However, I take it that the Attorney General is not confident of obtaining a reversal of the district court and the court of appeals, and therefore thinks it necessary to accomplish this change by statute. I trust the Supreme Court will take judicial notice of this, when it considers the Attorney General's position in United States against Alabama.

The Javits amendment we are now considering will expand the authority of the Federal Government over the field of elections, State as well as Federal. We should be careful how we seek to upset the balance between Federal and State powers and responsibilities. We should be careful how we seek to expand the power of the Federal Government over matters which have always in the past been matters of State concern. In this connection, I ask unanimous consent to have printed in the RECORD at this point an editorial from the Wall Street Journal of March 21, 1960.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE MOMENTUM OF POWER

While neither the advocates of the civil rights bill in the Senate nor the southerners who oppose it are satisfied with the way things are going, one clear conclusion is emerging from the voting.

Federal power is in danger of being broadened beyond the intention of many of the advocates of the administration's measure.

The out-and-out statists, who would have Federal power grow ever larger in every field, are not displeased. But even some of the liberal Senators are dismayed to find that the power they wish to apply in a limited area inevitably bursts the bounds they would set. And those who, like President Eisenhower, "would like to diminish (Federal power) rather than to increase it" would do well to take stock of its growth.

What has happened to the section of the administration's civil rights bill that would have made bombings of schools and churches a Federal crime is a case history showing that once a grant of Federal power is started on its way, its very momentum will carry it far beyond the intentions of its originators.

The moment Senator DIRKSEN introduced his bill making it a Federal crime for arsonists or bombers of only schools and churches to cross State lines, two factors became inexorably involved. One was the moral revulsion of most people at such violence, and their desire to prevent or punish such acts with more law. The other was the legal principle of equal application of the law.

The interplay of two of these powerful stresses shaped that particular section so that it is now not at all what the administration meant it to be at first. The Federal power was broadened to include not only acts against schools and churches, but bombings or arson wherever they occurred in any kind of situation whatsoever. In the end, Senator DIRKSEN voted against his own proposal, its scope had been so widened.

Just as inexorably, the shape the section took under these two powerful factors, one emotionally understandable, the other legally unassailable, called to account the question whether it was wise to broaden Federal police powers in this way.

There have been cases of bombings and arson, but were they beyond the police powers of the State? We think not; but even if one wishes to argue that southern peace officers will not seek out the guilty and that even if they do southern juries will not convict them, does granting jurisdiction to Federal authorities solve that problem? Jury panels, whether State or Federal, are drawn from the area in which a crime occurs. Are the people, though they are the same people, expected to act differently on Federal juries than on State juries?

The answer to that question ought to be obvious to the least student of human nature. A man who will free a proven school or church bomber or arsonist in one court is not likely to convict him in another.

So the proposal, even if it should become law, is no cure-all for the kind of crime it aims to prevent. And since those crimes, inhuman as they are, are relatively few in the category of national crime, the necessity for expanding Federal police powers can, in all fairness, be seriously questioned.

And if the necessity can be fairly questioned, so can the wisdom. It is not the part of wisdom to assume that the expansion of Federal power, once begun, can be stopped exactly where and when a Senator wishes.

PROPOSED BROADCAST OF CAMPAIGN OF TRUTH TO CUBA

Mr. MUNDT. Mr. President, I address myself to the Cuban situation. A year of patient and hopeful waiting to determine the direction and progress of the revolution has resulted only in an intense hate campaign directed in venom against the United States. One would have thought that the energies of the new regime in Cuba might well have concentrated upon the elimination of the excesses and travesties of the old order rather than upon hysterical and unreasoning vituperation against its best friend and largest customer. But that, of course, presumes that the new leaders were determined upon an ideology similar in purpose and method to the concept of democratic order in a Western World of private enterprise. Of course, the processes of revolution are uncharted, but it would seem that leadership which needs to indulge in conjuring up fancies of mythical enemies beating at its gates in order to maintain its prestige and contain its furies is, indeed, a fragile one. I, for one, question whether internal national progress is ever made by misleading misdirection. Certainly, international sympathies and cooperation cannot be attained by malicious falsehood. Truth has a very certain path of revelation.

As their close neighbor and dear friend, the peoples of the United States have sat by for a year earnestly hoping that the promise of better days in a cleaner political atmosphere might be the lot of their Cuban brothers. Respectful of the traditional right of all men to govern their own destiny in their own environment, we have neither interfered nor have we volunteered counsel. I believe that our other neighbors to the south, in fact the free world, have appreciated our forbearance and good will. Mayhap we, and maybe the peoples of Cuba, have misunderstood the purposes and ultimate goals of the bearded clique who have attained control of Cuba. Maybe by the beating of drums and the use of noble slogans and cliches their intention has been to misdirect the noble purpose of revolution into the mire of regimentation and dictatorship.

There have been other historic revolutions in Cuba. Each has surrounded itself with the trappings of pious phrases initially noble in purpose and goal. Most have floundered upon the rocks of selfishness and exploitation. Can this be another in sequence? Or, does this one embrace an even more potent change into the darkness of totalitarianism? Certainly the passing days rather than clarifying the direction cause us all deep concern. The outlook at the moment from all available facts seems dire indeed. Unless corrected or changed, the present direction of the Castro movement seems certain to lead to communism—to national bankruptcy or to new and perhaps even bloodier revolutions.

I will not here undertake to spell out the story of events within Cuba since the spellbinding parade of the bearded ones from the mountains into the capitol at Havana nor of the multitude of flats which have since upset civilized concepts of individual liberties, social order, and proprietary rights. The Congress has been apprised of these happenings and our people have been kept advised by all our news media. Were these executive mandates directed solely to the concern of Cuban citizens and Cuban property, our interest, concern, and protest might be questioned.

However, we need no additional waiting period for proof that the excesses which have been and are being committed in the name of "nationalism" and "agrarian reform" vitally affect the interests of millions of U.S. citizens whose savings are invested in the securities of American corporations which, with the encouragement of the U.S. Government, have placed all or part of their capital abroad. Even more important, they have a direct bearing upon the peace and security of the entire free world.

It would seem that the pattern heretofore set by all of us in the inter-American community of nations—a pattern of the freedoms and of democratic growth in mutual relationship—is in real jeopardy. Hence, the concern is not ours alone but of every member state and of every individual in the Western Hemisphere. It is indeed of real concern to freemen everywhere.

But we, the United States, have been selected for external sacrifice. We who in living memory rescued the island from medieval bondage. We who have given order, vitality, technical wisdom and wealth are now being eternally damned for our civilizing and cooperative virtues. This is nothing new in pattern. Our energies, our growth, our size, our dynamics, have ofttimes in the past subjected us to the false criticisms, the ambitions, and the prejudices of foreign tyrants and their gross purposes. It is not new that false smokescreens of hate have been thrown up to hide personal ineptitudes and unsound and ineffective leadership upon local scenes. We have taken it before in silence but with pity. Though hurt and chagrined, we have kept silence with restrained dignity. Perhaps it is the Christian lot and the price

we pay for achievement and size. Patience has sometimes paid with change.

But we are facing a markedly different world today when contending forces seek to determine mankind's future destiny. It is a contest between individual freedoms and spiritual attainment against regimented materialism and external darkness.

Victimized in such a contest, it behooves us to defend ourselves and our principles and assume a forthright leadership. The days of laissez faire are over.

What, Mr. President, have the Cuban bearded ones been doing to us in these past months? With malicious hate, they have maligned and excoriated us ad nauseum; they have insulted our President and our Ambassador; they have stolen our property and accused us of mass murder. Through their controlled press, radio, and television, by the repetitive lie technique, they have endeavored to turn their credulent adherents into hostile enemies of the United States. They have shut off all means and sources of rebuttal and thereby have suppressed truth. The Committee on Freedom of the Inter-American Press Association has just reported that the entire Cuban press had "either directly or indirectly physically passed into the hands of the Government there or has become so intimidated that it cannot be considered free."

To date, our sole reprisal has been silence, with pity for the poor deluded Cuban public, while the property and interests of our own citizens were being expropriated without compensation.

Mr. President, that is the sorry record of the vilification and provocation of our country by the ruling Cuban regime during the past year. The question we face is: How much longer do we exercise patience? How much longer do we forbear? What should we do about it?

If I thought that by guarding our silence we would be serving the long-run interests of the Cuban people, as well as our own, I would recommend continued patience and forbearance. I would tolerate the sting of the gnat a while longer, certain that the fair winds would soon rise and blow it into the sea.

I am convinced that unless the present regime in Cuba does change its ways that is precisely what will happen—in time. But will it happen soon enough? Will it happen before irreparable damage is done to the essential ties and interests of the people of Cuba and the United States?

That is the question which disturbs me. That is the question which has led me to make these remarks today.

I am persuaded that if we further acquiesce in the proliferation of lies about this Nation, we shall lend support to the effort of Communist sympathizers to drive a permanent wedge between Cuba and the United States. Unless that attempt is counteracted and counteracted now, the wedge will remain long after the unshaved and unshorn ones have disappeared into unhallowed graves.

Therefore, Mr. President, I believe we must take immediate affirmative action to keep open channels of truth to the Cuban people, channels of truth which will penetrate, through the din of distortion which the present government in Havana hammers incessantly into the ears of the Cuban people.

Mr. President, I was the initial author of Public Law 402, the Smith-Mundt Act, of 1948, which was "an act to promote the better understanding of the United States among the peoples of the world and to strengthen cooperative international relations," which established a permanent U.S. Information Service. After this bill passed the House in the 80th Congress, former Senator Alexander Smith, of New Jersey, who introduced a companion bill in the Senate, rendered trojan service to steering its passage through the Senate. As part of this information service, there was created the "Voice of America," a worldwide broadcasting medium.

As coauthor of this act, now known as the Smith-Mundt Act, I feel a special responsibility to bring to the attention of the Senate and the country the immediate necessity in some penetrating way to get the truth about the United States to the 6,500,000 Cuban people.

I recall to the Senate part of the report of the Mundt special subcommittee of the Committee on Foreign Affairs made in 1948. It reads, in paragraph 7:

> It is essential that the Voice of America adapt its programs to the political conditions and needs of a given country. For example, the people of a country in the throes of political upheaval are vastly more interested in American policy and reactions with regards to their problems than they are in the American adult education program, interesting though that would be under less critical circumstances.

And then in paragraph 8:

> The Voice of America should, with the aim of discomforting the local government and encouraging the resistance of the people in totalitarian and satellite countries, broadcast back to the country concerning news items and commentaries on events, the publicity of which the local authorities seek to suppress.

I sincerely believe that if the voice of truth is heard in Cuba in continuing stream, it will surely, in time, overwhelm with thunderous righteousness the carping, the cackling, the ranting, and raving against the United States and its people which now dominate that island.

Mr. President, just about 1 year ago I sat for nearly 4 hours in the Presidential Room of the Statler Hotel here in Washington listening to Fidel Castro speak to the annual convention of newspaper editors and reply to the questions asked him from the floor. I was there as the guest of Mr. Fred Christopherson, of South Dakota's Sioux Falls Daily Argus-Leader. Frankly, I was unimpressed and totally unconvinced by Castro's statements. However, his representations to that audience concerning his friendship for the United States, and his good will toward the American people, accompanied by his invitation for more American tourists to visit Cuba, have clearly been negated and refuted by his own subsequent actions and declarations. Increasingly since then, he has maligned and criticized the United States and its people without reason and devoid of truthfulness. This constant drumfire of anti-American criticisms, if left too long unanswered in the minds of those captive Cubans who hear it, can create misunderstandings and suspicions and ill will about the United States which will mar Cuban-American relationships long after Castro and his ilk have ceased to maintain tyrannical controls over this presently unhappy island.

In a very pointed way, the Cuban situation tests the very premises upon which the information program and the Voice of America were established and upon which they have operated during the past dozen years. Its premise has ever been that the telling of the truth about the United States and its policies to peoples held in the grip of tyranny would ultimately destroy that grip.

This, Mr. President, is the premise which has carried the Voice of America into distant lands in all parts of the world. Yet, here within the shadow of the Nation, in Cuba, scarcely 90 miles from our shores, we have failed to test this premise as we should. We have in no wise and by no means been getting the truth, and rebutting the lies, into Cuba, with the vigor and scope required to meet this challenge.

It seems such a travesty and indeed such a frightening tragedy that here, close to us, in this land of peoples for whom we have had such long and deep feelings of friendship—in an island paradise the peoples of which are linked in close livelihood to our own and whose security is so intimately geared to our own—in this land the trumpet of tyranny blows. Will we not drown out the blasts against the voice of truth and freedom with all the power we command?

There is one initial start we can make. The means are at hand in the information program—in the Voice of America. Let us utilize the resources of this existing agency so that the truth may carry clearly and sharply across the waters into the confused and brainwashed minds of the Cuban people.

Unfortunately, we have dealt in petty fashion with our broadcast facilities to Latin America since 1953. In that year, the Congress curtailed the budget of the U.S. Information Agency, and, to stay within its budget and to provide facilities presumably needed in other seemingly more provocative parts of the world during that and succeeeding crucial years, the USIA Spanish language broadcasts to Latin American countries were substantially limited.

We send few, if any, broadcasts to Latin America in English, Portuguese, or Spanish from the United States on medium wavelengths. We send limited shortwave transmissions to Cuba, principally in English, which are received by less than 150,000 of the owners of the 1½ million Cuban radio sets. As in this country, the listening habits of Cubans are geared to normal medium wavelength reception. Most Cuban receiving sets are limited to the medium wave broadcast band.

I propose that within the framework of the North American Broadcast Agreement we use the facilities of such commercial broadcasting stations as are

proximate to Cuba and which have some regular Cuban audiences to beam continuing messages of truth toward that island. I well appreciate that we do not have enough existing, adequate clear channel stations to saturate Cuba or facilities using alternating wavelengths to offset Cuban radio interference. But at least this will be making a beginning.

I join with the Senator from Colorado [Mr. ALLOTT] in requesting the U.S. Information Service to make an immediate study and report to the Foreign Relations and the Foreign Affairs Committees and the Appropriations Committees of both Houses to determine other effective broadcast means. The task should not be too difficult. We certainly are the world leaders in this technical field. In their study, I am certain consideration would be given to the suggestion of using the floating transmitter of the Voice of America, as well as possible broadcasts by plane.

To make this beginning, additional funds will be required by the U.S. Information Agency to contract time from commercial stations. Appropriations for the Agency for this fiscal year, ending June 30, have already been determined and obligated.

Within the money presently available to our U.S. Information Agency, I wish to commend the Agency on the efforts which it has been making. For about a year and a half, the Voice of America has been broadcasting shortwave in English to Latin American countries including Cuba. We are still placing materials on certain Cuban radio stations for local broadcasting despite the fact that the Cuban Government has taken over many of the radio outlets and, of course, the necessity of utilizing a very "soft sell" in order to keep our material from being banned entirely from Cuban radio stations. The Agency has also been supporting daily shortwave broadcasts in Spanish to Latin America by station WRUL.

The most significant development in this area of existing activities, however, took piace last night when the Voice of America initiated Spanish language broadcast by shortwave to Cuba. Unhappily, shortwave broadcasts are heard by such a small fraction of the Cuban listening public that this is like sending out a boy to do a man's work. But it is far better than doing nothing at all. We need, however, to reach the general listening public in Cuba, in its own language, and with a radio wave which is receivable by Cubans, who like Americans, have the habit of listening to the conventional radio wave lengths. But, with the funds available to it, the U.S. Information Agency is to be congratulated on the initiation of this new Spanish language broadcast to Cuba last night.

I should add, Mr. President, that the U.S. Information Agency has a staff of 9 Americans and 25 local national employees presently working for it in Cuba. We maintain a binational center at San Diego; a reading room was recently opened in Santa Clara which is designed to be converted to a binational center; and seven mobile film units are showing films to schools and other groups throughout the island. Recently, a sizable pamphlet program was conducted including the direct mailing to newspapers and other media of information and communication of releases on Cuban sugar prices, comparing prices paid by the Soviet Union with world prices and those much more attractive prices paid by the United States under the quota system.

However, Mr. President, we must meet the mighty challenge of the hour emanating from Cuba with something more effective and sustained and vigorous than all of the foregoing. We need to hit hard and often with the truth about America. We need to refutc the slanderous attacks made against our country. We need to reassure those millions of Cubans who are our present or potential friends that the United States is their most important customer and their faithful, helpful ally and associate.

I have made a firsthand check on the cost involved in purchasing commercial time over the medium-wave stations in our country which have the capability of being heard consistently and widely in Cuba. It is both surprising and gratifying, Mr. President, to learn how much we can do with so little in this area of activity. I find that such stations as WGBS in Miami, which is a 50,000 watt station by day, reduced to 10,000 watts in the evening hours, might well be stepped up to a 50,000 watt nighttime station for purposes of beaming programs to Cuba. Even without such accelerated evening programs, WGBS has a great listening capability in Cuba.

In addition, there are other radio stations in Florida from which USIS could rent program time to beam Spanish language programs of truth to Cuba. From Atlanta, Ga., a clear-channel station, WSB, has a penetration far into the listening areas of Cuba.

I have checked programing costs with these stations and have had Deputy Director Abbott Washburn, of the U.S. Information Agency, supply me with an estimate as to how much money might be needed to step up adequately this campaign of truth to Cuba in the Spanish langauge, on medium-wave broadcasts, between now and the end of the fiscal year. Mr. Washburn reports that a supplemental appropriation of $100,000 for this purpose would enable the USIA to do an effective job in this connection from now until the 1st of July.

My own cost estimates confirm the recommendation of Mr. Washburn. I can think of no place in our entire field of international relations or in the maintenance of our preparedness and security setups that an extra $100,000 made available right now could be more wisely and effectively invested, Mr. President, than to project the type of information program I have been suggesting to the good people of Cuba, whose ties with the United States are strong but who presently find themselves cut off from the customary avenues of information. In fact, such an inexpensive, but thoroughly important, program now might indeed save us billions of dollars of later expense should Cuba pass completely into the arms of alien Communists, or should its Government become permanently anti-American.

Good defense, Mr. President, like good charity, begins at home. At a distance of only 90 miles from Florida there is trouble on the home front which the proper type of information program projected vigorously enough by the Voice of America can help to terminate.

I therefore propose that the sum of $100,000 be immediately appropriated to the USIA earmarked solely for the purposes of a broadcast campaign of truth beamed to Cuba. When the Information Agency gives its report of useful additional facilities to intensify this campaign of truth, Congress at that time can determine additional appropriations in our regular appropriations bill for the ensuing fiscal year.

Mr. President, I submit an amendment, and if unsuccessful in having a special meeting of the Appropriations Committee approve it—and such meeting has been called—I shall offer it as an amendment from the floor to the supplemental appropriations bill soon to come before the Senate.

The PRESIDING OFFICER. The amendment will be received, printed, and lie on the table.

Mr. MUNDT. Mr. President, we of a certainty are in a battle for the freedom and the peace of this hemisphere. Let us indeed be prepared and equipped for the contest. One of the best steps in preparation, and one of the best weapons in our equipment, is to get the truth about America and the truth about American policies and programs into the minds and hearts of the people of Cuba.

ORDER FOR ADJOURNMENT UNTIL NOON TOMORROW

Mr. JOHNSON of Texas. Mr. President, has an order been entered for the convening of the Senate tomorrow?

The PRESIDING OFFICER. The Chair is advised that no such order has been entered.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that when the Senate concludes its deliberations today, it adjourn until 12 o'clock noon tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. JOHNSON of Texas. Mr. President, I do not know if any other Senators desire to address the Senate at the conclusion of the statement about to be made by the Senator from Pennsylvania. How long does the Senator expect to speak?

Mr. CLARK. From 5 to 10 minutes.

Mr. JOHNSON of Texas. Does the Senator know if any other Senators propose to transact any business or ask for any votes this evening?

Mr. CLARK. Not so far as I know.

Mr. MONRONEY. That would not preclude the offering of an amendment and a request that it lie on the table, would it?

Mr. JOHNSON of Texas. Not at all.

Mr. President, I give assurance to all Senators that no other business will be transacted today except the insertion of matters in the RECORD or the offering of amendments; that there will be no votes of any kind; and that when we conclude our business today, we will reconvene at noon tomorrow.

Mr. MUNDT. Mr. President, will the Senator from Texas speak a little louder, please?

Mr. JOHNSON of Texas. I had said that when the Senate concluded its business today, it would adjourn until noon tomorrow; that there would be no yea-and-nay votes this evening; but that the Senate would remain in session to enable Senators to offer amendments and make insertions in the RECORD. No voting is expected to take place, and no business will be transacted other than the insertion of matters in the RECORD and the offering of amendments.

Mr. MUNDT. That will be very satisfactory.

LEASING OF PORTION OF FORT CROWDER, MO.—CIVIL RIGHTS

The Senate resumed the consideration of the bill (H.R. 8315) to authorize the Secretary of the Army to lease a portion of Fort Crowder, Mo., to Stella Reorganized Schools, R–I, Missouri.

Mr. CLARK. Mr. President, first, I desire to comment on the able speech made by the distinguished junior Senator from Virginia [Mr. ROBERTSON] a few minutes ago with respect to the pending amendment; and second, on the letter from the Attorney General, which the minority leader read into the RECORD earlier this afternoon.

As a practicing lawyer, I should like to differ with the viewpoint expressed by my good friend, the very able lawyer from Virginia, that there is anything unconstitutional about the pending amendment. The Senator from Virginia bases his claim about the lack of constitutionality of the amendment on the theory that a presumption is created under the amendment which is not in accord with the basic facts. He goes further and cites certain Supreme Court cases, including an opinion by the late great Justice Oliver Wendell Holmes, to the effect that any presumption arising from a state of facts must be reasonable. He concludes that the presumption we create in the amendment from the basic facts is not reasonable, and that therefore the amendment is unconstitutional.

However, there is no presumption in the Clark-Javits amendment. We do not utilize the doctrine of presumption at all. Accordingly, in my judgment, and in the judgment of my cosponsors, the argument of the Senator from Virginia falls of its own weight.

It is not true, as the Senator from Virginia avers, that every person has been denied the right to vote if and when a presumption has been found. On the contrary, every person, after a pattern or practice of discrimination has been found, must come before the voting referee and testify under oath that he meets the qualifications set forth by State law. This is not a presumption. It is a judicial procedure to ascertain a fact in and of itself.

Mr. President, I turn now to the question of presumption. The doctrine of presumption has nothing to do with the Clark-Javits amendment. Our amendment will create new Federal procedure which will be called into effect if—and only if—a pattern of discrimination is found to exist by a Federal district court, in an adversary judicial proceeding. Accordingly, we conclude that no constitutional question is raised by this amendment; and I confirm what my friend, the Senator from Virginia, said—namely, that any off-the-cuff indication to the contrary which may have been voiced on the spur of the moment by the Attorney General, when he appeared before the Committee on Rules and Administration, is not entitled to any serious consideration whatever. I reiterate that no constitutional question is involved in the pending amendment.

Mr. President, it is the judgment of the sponsors of the pending amendment that the procedure it provides for is fair, affords due process to the interested parties, and is attuned, to the extent that it can well be, to the need for speed.

The provisions for provisional voting are fair and are precisely spelled out, and are equally applicable in districts where voting machines, rather than paper ballots, are used. When a vote is challenged, it can be cast by paper ballot, and thus can be identified separately from the votes cast on the voting machines. Today that is done in my State, and in many other States, in the case of military voters and absentee voters. In every instance where that occurs under State election procedures, the secrecy of the ballot has always been maintained, and I see no reason to doubt that that would be done in this case.

I turn briefly, Mr. President, to the rather extraordinary letter from the Attorney General to the Senator from Illinois [Mr. DIRKSEN], which was read into the RECORD earlier this afternoon. In order to afford my colleagues who may read the RECORD tomorrow an opportunity to consider my comments on the letter and at the same time have the letter before them, I ask unanimous consent that the letter be printed at this point in the RECORD, even though I know it has already been printed in the RECORD.

The PRESIDING OFFICER (Mr. HART in the chair). Without objection, it is so ordered..

The letter is as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 22, 1960.

Hon. EVERETT M. DIRKSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: You have asked for my comments upon the Clark-Javits amendment (3–11–60—B) to section 3 of your amendment (2–24–60—I) to H.R. 8315. Essentially, the Clark-Javits amendment would combine a voting referee proposal with the so-called enrollment officer procedures proposed by Senator Hennings (3–10–60—F).

Supporters of the Federal enrollment proposal contend that it is a stronger measure than the administration's referee proposal. This is not so. As a practical matter it would be worthless. It is for that reason that the administration is strongly opposed to it.

The defects of the Federal enrollment proposal cannot be avoided simply by adding the proposal to the voting referee plan.

Stated very simply, the Federal enrollment proposal would be totally ineffective, except in cases of voluntary compliance by State officials, because it does not provide any practical method of enforcement. It would provide the Negro with an opportunity to have his name enrolled by a Federal enrollment officer, but it does not provide any effective way to insure that State officials will allow the Negro to vote.

It provides that when a State election official refuses to honor a Federal enrollment certificate and denies the Negro the right to vote a suit for an injunction may thereafter be started by the Attorney General on behalf of those who have been deprived of the right to vote. Such equitable relief would be of no value because by the time the lawsuit was concluded the election would be over.

The act by the State officials of refusing to honor a certificate of the enrollment officer would not subject them to actions for contempt of court for they would not have disobeyed an outstanding injunction.

Nor does the fact that the officials would be subject to criminal penalties breathe life into the Federal enrollment proposal because, as I have stated on many occasions, criminal remedies in this field are of little or no value.

By way of contrast, under the voting referee proposal, this would be an outstanding court order requiring State officials to permit Negroes named in the order to vote. Any failure to comply with this order would permit the court to proceed immediately to hold them in contempt and impose a sentence of 45 days in jail or $1,000 fine.

I should like to use this opportunity again to emphasize that it is not enough, as the authors of the Clark-Javits amendment apparently believe, to pass a bill that simply assures Negroes of the right to register.

In an apparent failure to appreciate this simple truth, the authors of the Clark-Javits amendment would also emasculate the voting referee proposal.

I would particularly call attention to subsection (b)(2), page 3, of the Clark-Javits amendment which provides that an order declaring an applicant qualified to vote: "shall become effective 20 days after the issuance of such order and notice thereof to the Governor of the State, unless any person named therein shall have been registered by appropriate State officials in the intervening period, in which case the order may be vacated on application duly made as to the registration of such person."

Such a provision emasculates the voting referee proposal and would make a farce of any bill which included it. In practice, it would mean that after a Negro has applied to the Federal court and has proven his qualifications before the judge or a referee and the court has issued an order certifying him as qualified to vote, a State official could completely wipe out the binding effect of that court order simply by placing the Negro's name in a registration book. Once this was done, and the court order was vacated, State election officials would be under absolutely no compulsion from Federal process to permit the Negro to vote. It is the right to vote, and not merely the right to register that the 15th amendment of the Constitution guarantees to the Negro citizen.

To summarize then, the Clark-Javits proposal suffers from a fatal illness—it cannot be enforced. It is simply an enrollment scheme providing no guarantees that the Negro will be permitted to vote not now contained in the Constitution and present laws. If added

to the voting referee proposal of the administration it would not only clutter it up with worthless provisions but would seriously weaken it.

With kind regards.

Sincerely,

WILLIAM P. ROGERS,
Attorney General.

Mr. CLARK. Mr. President, I intend to disregard the intemperate language and the purple adjectives in which the Attorney General has stated his case. In my judgment, his phraseology would be more appropriate to a political speech than to a seriously reasoned legal document intended to call the legal views of the Attorney General of the United States to the attention of the Senate.

Therefore, I turn immediately to the Attorney General's substantive objections to the Clark-Javits amendment, which are two in number.

First, the Attorney General states, in paragraph 4 of his letter:

The Federal enrollment proposal would be totally ineffective, except in cases of voluntary compliance by State officials, because it does not provide any practical method of enforcement.

And in the same paragraph we find this:

It does not provide any effective way to insure that State officials will allow the Negro to vote.

Later in the letter the Attorney General states:

The act by the State officials of refusing to honor a certificate of the enrollment officer would not subject them to actions for contempt of court for they would not have disobeyed an outstanding injunction.

I believe that argument to be unfounded in fact or in law, Mr. President. I shall now read the pertinent provisions of the amendment which I believe sustain my position; I quote from page 8, line 20, of the amendment, beginning with paragraph (3) of subsection (c):

(3) Each qualified voter who is enrolled pursuant to this subsection shall have the right to vote, and to have such vote counted, in any election held in his registration district subject to the provisions of paragraph (4) of this subsection.

(4) Nothing contained in this subsection shall be construed to deny to appropriate State officials or other persons having standing under State law the right to challenge the determination of State registration or election officials that another person is qualified to vote or the right at the time of elections to challenge the eligibility to vote of persons enrolled hereunder.

Now I call the careful attention of my colleagues to the language which follows, and which I quote, and desire to emphasize:

Whenever such a challenge is made, however, the enrollee shall be permitted to cast his vote and have it counted, but it shall be preserved subject to a determination of the validity of the challenge in any appropriate action brought in the United States district court having jurisdiction over the registration district in which the challenge is made.

Later in the same paragraph, I quote further:

In any suit under the provisions of this paragraph, the determination of the Federal enrollment officer with respect to such registration shall not be stayed pending the final decision of the district court.

Mr. President, these provisions make it abundantly clear that a violation by a State election officer of the enrolling of a citizen by a Federal enrollment officer and the giving to that citizen of an election certificate will be a violation of Federal law; and a violation of Federal law can be enforced by a Federal district court at any time; and, specifically, I read the provisions of paragraph (6), on page 10, beginning at line 13, in the pending amendment:

(6) Federal enrollment officers shall determine whether persons enrolled under this subsection are afforded the right to vote and to have their votes fairly counted. For this purpose each such officer shall be authorized to attend at any election held within his registration district to inspect the taking of the vote and the counting thereof. Should any person enrolled under this subsection be denied the right to cast his vote or to have his vote counted, the Federal enrollment officer shall forthwith notify the Attorney General.

So, Mr. President, let us make the basic factual assumption which the Attorney General makes, which is that when they come to the polling place, the local officials will deny the enrolled, disfranchised citizen the right to vote, even though he has been registered. The Attorney General says there is no way by which that order can be enforced. Well, Mr. President, I do not know why the Attorney General did not see fit in his letter to refer to the provision of the amendment which immediately follows the portion I read a moment ago, which is paragraph (7), beginning in line 23, on page 10, and reading as follows:

(7) The provisions of this subsection shall be enforcible by appropriate civil and equitable proceedings instituted in the district court of the United States within the jurisdiction of which such registration district is located, by the Attorney General of the United States for and in the name of the United States, or by any individual whose rights under this subsection shall have been denied or interfered with—

And mark this well, Mr. President—

and the court may grant such permanent or temporary injunction, restraining order or other order as it may deem appropriate.

That means, to any layman, as well as it means to any lawyer, that the moment an election official refuses to permit a citizen to vote, after it has been found he is entitled to vote by a Federal enrollment officer, the Attorney General of the United States, acting through his duly authorized U.S. attorney or one of his deputies who operates out of a Federal district court to which jurisdiction is given over these proceedings, will immediately go into court and have a temporary restraining order issued directing the election officials to permit the individual, and all similarly situated individuals, to vote; and if they refuse to do so, that is clearly contempt of court.

Mr. President, the procedure which we have set up in the pending amendment is identical, in substance and in principle, with the procedures for permitting a challenge of a vote contained in the election laws of all 50 States, from Alaska all the way through to Wyoming.

Mr. President, for the Attorney General to attempt to tell the Senate of the United States that is not the law is, I think, an extraordinary action to take for an official who has risen to the height of his profession and is acting as the Attorney General of the United States.

Mr. President, I am most anxious to say nothing intemperate in the course of my remarks, but I ask my colleagues to consider carefully what the Attorney General said in his letter our amendment provides, and the further explanation which I have just made, as well as the very eloquent comments the senior Senator from New York [Mr. JAVITS] made earlier today, when the letter of the Attorney General was first read.

So much, Mr. President, for the Attorney General's first point. I turn now to his second point, which is, in effect, that our amendment is defective in subsection (b)(2), on page 3, where we give State authorities an opportunity to act and register an individual after a pattern or practice of discrimination has been found by a Federal court.

This provision was a compromise provision and was intended to give State officials an opportunity to purge themselves, an oportunity to save their face, an opportunity to do the right and just thing, by permitting their own citizens to register, under their own State laws, instead of requiring that a Federal procedure should be invoked to insure the citizen of his constitutional rights.

It is a little surprising that so temperate and moderate a provision should be found objectionable by the Attorney General, when he stated:

Such a provision emasculates the voting referee proposal and would make a farce of any bill which included it. In practice, it would mean that after a Negro has applied to the Federal court and has proven his qualifications before the judge or a referee and the court has issued an order certifying him as qualified to vote, a State official could completely wipe out the binding effect of that court order simply by placing the Negro's name in a registration book.

Once this was done, and the court order was vacated, State election officials would be under absolutely no compulsion from Federal process to permit the Negro to vote. It is the right to vote, and not merely the right to register, that the 15th amendment of the Constitution guarantees to the Negro citizen.

Again I find myself regretfully compelled to differ completely from the legal judgment of the Attorney General. In fact, it is difficult indeed for me to understand how he could have come to a conclusion so contrary to what seems clearly set forth in the pending amendment.

And again, in order that Senators may have the pertinent provisions of the amendment before them, I shall again read them into the RECORD. I quote first from subsection (b)(1), beginning at line 22 of page 2 of the amendment:

If the court finds such pattern or practice, any person of such race or color residing

within the affected area shall, for 1 year and thereafter until the court subsequently finds that such a pattern or practice has ceased, be entitled, upon his application therefor, and subject to the provisions of this subsection, to an order declaring him qualified to vote, upon proof that he is qualified under State law to vote.

So we find our disfranchised citizen entitled to an order declaring him qualified to vote.

I turn now to subsection (b) (2), which provides that an order qualifying the citizen to vote shall become effective, and I now quote again:

Twenty days after the issuance of such order and notice thereof to the Governor of the State, unless any person named therein shall have been registered by appropriate State officials in the intervening period, in which case the order may be vacated on application duly made as to the registration of such person. When such order shall become effective, it shall apply to any election which is held within the longest period for which such applicant could have been registered or otherwise qualified under State law and at which the applicant's qualifications would under State law entitle him to vote. Except as provided in this paragraph, the execution of any order disposing of such applications shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

I quote again from subsection (b) (3), which immediately follows what I have just read:

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared to vote shall be permitted to vote in any such election.

Skipping a sentence, and quoting again:

The refusal by any such officer with knowledge of such order to permit any person so declared qualified to vote, to vote at an appropriate election shall constitute contempt of court.

Mr. President, let us see how this would work out. A pattern of discrimination would be found. The Attorney General would cause a Federal referee to be appointed by the court. The Federal referee would find that John Doe had illegally been deprived of his right to register and to vote. The Attorney General would prepare an order for the court's approval, which would say, "John Doe shall be permitted to be registered and to vote." I ask Senators not to forget the "and to vote."

Thereupon the Governor would have a chance to purge the State. The Governor could move in to register John Doe or to cause him to be registered. Thereupon, according to the provisions of the amendment, the order may be vacated—and I wish to emphasize that the amendment states that the order "may" be vacated—if the attorney general of the State came to the court to ask to have it vacated because the State had purged itself of its illegal action.

In the first place, Mr. President, can we imagine a State attorney general coming to court to say, "We do not need any Federal action any more because the State has enrolled this fellow and he is going to be allowed to vote." But let us assume an attorney general would be so contemptuous of a Federal court.

Let us assume also that when the man got to the polling place he was not allowed to vote. The vacated order, lying in the court under the court's judicial jurisdiction, vacated for the time being because the State had purged itself, could, under any ordinary principle of equity, be called immediately into effect by the court, which would be told by the individual that he had not been permitted to vote. Immediately the provisions which I read earlier, which authorize the invoking of civil and equitable remedies to enforce the vacated—but—reinstated court order, would be called into effect, as would be the case if the Federal enrollment officer reported to the court that an individual who had been enrolled was denied the right to vote.

A temporary restraining order would be slapped on the election officials, as it would be slapped on in the State of Michigan, the State represented in part by my friend who is presently occupying the Chair [Mr. HART]; or in the State of Oklahoma, the State of another distinguished Senator who is present in the Chamber; or in the State of Pennsylvania, from which I come; or in every other State of the Union.

When a man's right to vote is challenged and he defies the challenge, he can go to the election court. If the challenge were unfounded—as it would be in this case, because the man would have been previously determined to be entitled to vote by the decree of the Federal court, held in abeyance or temporarily vacated because of the action of the State—action would be taken. I think there is no shadow of doubt that in such an instance anybody who defied such an order by the Federal court would be held to be guilty of contempt.

Mr. President, with all due deference I say again that in my judgment—and I am sure I speak for the senior Senator from New York, who unfortunately had to leave the Chamber—there is no merit in the position taken by the Attorney General. I am confident that any Senators who read the debate of this afternoon will give that position scant heed.

Mr. President, I yield the floor.

Mr. MONRONEY. Mr. President, I offer an amendment for myself and Senators KERR, GORE, BIBLE, CASE of South Dakota, MAGNUSON, CHURCH, LONG of Hawaii, TALMADGE, and RANDOLPH. I ask that it be read for the information of the Senate, be printed, and lie on the table.

The PRESIDING OFFICER. The amendment will be stated for the information of the Senate.

The CHIEF CLERK. On page 14, beginning with line 21, it is proposed to strike out all through line 9 on page 15.

On page 15, line 10, it is proposed to strike out "(2) Section 10 of such Act" and in lieu thereof to insert the following: "(b) Section 10 of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress)".

On page 16, beginning with line 1, it is proposed to strike out all through line 15 on page 17.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Mr. MONRONEY. Mr. President, I ask that there may be printed at this point in the RECORD an explanation of the proposed impacted area school amendment to the civil rights bill.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF PROPOSED IMPACTED AREA SCHOOL AMENDMENT TO THE CIVIL RIGHTS BILL

Under the amendment to be proposed by Senator MONRONEY and others to section 5 of the Dirksen civil rights substitute, section 10 of Public Law 85-620 would be amended to read as follows (new language italic):

"CHILDREN FOR WHOM LOCAL AGENCIES ARE UNABLE TO PROVIDE EDUCATION

"SEC. 10. In the case of children who it is estimated by the Commissioner in any fiscal year will reside on Federal property at the end of the next fiscal year—

"(1) if no tax revenues of the State or any political subdivision thereof may be expended for the free public education of such children; or

"(2) if it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children,

the Commissioner shall make arrangements for constructing or otherwise providing the minimum school facilities necessary for the education of such children. *Such arrangements may also be made to provide, on a temporary basis, minimum school facilities for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local governmental authority and it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children.* To the maximum extent practicable school facilities provided under this section shall be comparable to minimum school facilities provided for children in comparable communities in the State. This section shall not apply (A) to children who reside on Federal property under the control of the Atomic Energy Commission, and (B) to Indian children attending federally operated Indian schools. Whenever it is necessary for the Commissioner to provide school facilities for children residing on Federal property under this section, the membership of such children may not be included in computing under section 5 the maximum on the total of the payments for any local educational agency."

The amendment would strike the following additional provisions proposed to be inserted in Public Law 85-620 by the Dirksen substitute in its present form.

"(b) Whenever the Commissioner determines that—

"(1) any school facilities with respect to which payments were made under section 7 of this Act, pursuant to an application approved under section 6 after the enactment of this subsection, are not being used by a local educational agency for the provision of free public education, and

"(2) such facilities are needed in the provision of minimum facilities under subsection (a),

he shall notify such agency of such determination and shall thereupon be entitled to possession of such facilities for purposes of subsection (a), on such terms and condi-

tions as may be prescribed in regulations of the Commissioner. Such regulations shall include provision for payment of rental in an amount which bears the same relationship to what, in the judgment of the Commissioner, is a reasonable rental for such facilities as the non-Federal share of the cost of construction of such facilities bore to the total cost of construction thereof (including the cost of land offsite improvements), adjusted to take into consideration the depreciation in the value of the facilities and such other factors as the Commissioner deems relevant. Upon application by the local educational agency for the school district in which such facilities are situated and determination by the Commissioner that such agency is able and willing to provide suitable free public education for the children in the school district of such agency to whom section 10 is applicable, or upon determination by the Commissioner that such facilities are no longer needed for purposes of subsection (a), possession of the facilities shall be returned to such agency. Such return shall be effected at such time as, in the judgment of the Commissioner, will be in the best interest of the children who are receiving free public education in such facilities, and in the light of the objectives of this Act and the commitments made to personnel employed in connection with operation of such facilities pursuant to arrangements made by the Commissioner."

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, March 22, 1960, he presented to the President of the United States the following enrolled bills and joint resolution:

S. 601. An act to authorize and provide for the construction of the Bardwell Reservoir;

S. 1712. An act to extend the application of the Motorboat Act of 1940 to certain possessions of the United States;

S. 2185. An act to provide appropriate public recognition of the gallant action of the steamship *Meredith Victory* in the December 1950 evacuation of Hungnam, Korea;

S. 2483. An act to provide flexibility in the performance of certain functions of the Coast and Geodetic Survey and of the Weather Bureau; and

S.J. Res. 115. Joint resolution authorizing the purchase of certain property in the District of Columbia and its conveyance to the Pan American Health Organization for use as a headquarters site.

ADJOURNMENT

Mr. MONRONEY. Mr. President, pursuant to the order previously entered I move that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 6 o'clock and 25 minutes p.m.) the Senate adjourned, pursuant to the order previously entered, until tomorrow, Wednesday, March 23, 1960, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES

TUESDAY, MARCH 22, 1960

The House met at 12 o'clock noon.

The Chaplain, Rev. Bernard Braskamp, D.D., offered the following prayer:

II Corinthians 4: 11: *That the life of Jesus might be made manifest in our mortal flesh.*

Almighty God, grateful for Thy divine providence, we are again gathering in the fellowship of prayer, bringing our many needs to Thy loving kindness; our weakness to Thy strength; our littleness to Thy greatness; and our sinful and wayward hearts to Thy grace and mercy to be pardoned and purified.

Grant that in the midst of the darkness and confusion of our times we may walk together in faith and in humility, seeking earnestly to know Thy holy will and doing it with courage and faithfulness.

May there be in us a new nativity of the spirit of sympathy and understanding, endowing us with insight to see more clearly the hidden splendor and the eternal worth of every human soul.

Inspire us with a nobler skill in the art of brotherly living and may the character and conduct of the lowly Man of Galilee be made manifest in all our contacts with our fellow men.

Hear us in His name. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

FREDRIC MARCH AND FLORENCE ELDRIDGE

Mr. MONAGAN. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. MONAGAN. Mr. Speaker, many Americans were recently disturbed by news of the arrest and detention of noted actor Fredric March and his wife, Florence Eldridge, in Madras State, India.

This famous couple along with Dr. and Mrs. Burrill Crohn, of New Milford, Conn., were charged with illegal possession of alcohol and were required to put up $16,000 before they were released.

It has since been revealed that the party carried approximately 3 ounces of liquor and that the complaint against them was filed by a travel agent who was in competition with the agent who was handling their trip and who sought to embarrass his competitor.

I am happy to say that the incident has had a pleasant ending.

In India, Government Official Raj Bahadur, of the Indian Ministry of Transport, has extended the unqualified apologies of the Indian Government.

Mr. March, in a letter to me, states that his party now looks back on the whole affair as "an amusing incident."

Mr. March concludes his comments with a handsome bouquet for the Indian people generally. I quote from his letter:

This one incident could not in any way outweigh the kindness, courtesy, and hospitality we had on all sides during our 4 weeks in India.

Thus, a gentleman graciously terminates what might have been a serious source of international tension. Congratulations, Mr. March.

CALL OF THE HOUSE

Mr. ALFORD. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently no quorum is present.

Mr. McCORMACK. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 30]

Anderson, Mont.	Chiperfield	Michel
Arends	Coffin	Miller, N.Y.
Baumhart	Durham	Minshall
Bennett, Mich.	Fallon	Montoya
Blitch	Healey	Powell
Brown, Mo.	Hess	Reuss
Budge	Holifield	Saylor
Canfield	Hosmer	Scherer
	McGinley	Taylor

The SPEAKER. On this rollcall 406 Members have answered to their names; a quorum is present.

By unanimous consent, further proceedings under the call were dispensed with.

CIVIL RIGHTS

Mr. CELLER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 8601) to enforce constitutional rights, and for other purposes.

The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 8601, with Mr. WALTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose yesterday there was pending an amendment offered by the gentleman from Ohio [Mr. McCULLOCH], a substitute amendment offered by the gentleman from New York [Mr. CELLER] for the McCulloch amendment, and an amendment by the gentleman from South Carolina [Mr. HEMPHILL] to the Celler substitute amendment.

Without objection, the Clerk will again report the Hemphill amendment to the substitute.

There was no objection.

The Clerk read as follows:

Amendment offered by Mr. HEMPHILL to the amendment of Mr. CELLER as a substitute for the amendment of Mr. McCULLOCH: On page 3, line 11, after the word "district" and the comma add "who shall have knowledge of and shall satisfy the court as to their familiarity with the election laws involved, the qualifications of electors, and the election laws of the particular State or governmental subdivision involved, and the Statutes of the United States applicable to said elections."

Mr. CELLER. Mr. Chairman, I ask unanimous consent that all debate on the so-called Hemphill amendment close in 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HEMPHILL. Mr. Chairman, I ask unanimous consent to proceed for 5 minutes.

The CHAIRMAN. The time has been fixed, but if there is no objection, the gentleman may proceed.

Is there objection?

There was no objection.

Mr. HALLECK. Mr. Chairman, will the gentleman yield?

Mr. HEMPHILL. I shall be glad to yield to the gentleman from Indiana.

Mr. HALLECK. I think it ought to be understood that when this measure was originally introduced there were two requirements that are presently in the McCulloch amendment that were put in there to allay certain fears that were expressed. The first was the requirement that the referee be a qualified voter, and, secondly, that he live in the judicial district.

I just wanted to say at this point that in my opinion that is a sufficient protection for what we are undertaking to do.

Mr. HEMPHILL. I am glad to have the views of the gentleman from Indiana, but am sorry that he does not subscribe to the view that if you are going to put someone in a position of a judge at the ballot box he should have some knowledge of the laws governing elections. The gentleman has been in politics for many years and I assume can appreciate that in politics anything can happen, and some political hack may be put in as a referee, and some political hack will be put in as a referee. Now, if you are going to put somebody at the ballot box of this Nation—and I want you to listen to me, those of you who have to go down the line and vote for this bill whether you like it or not—if you are going to put somebody at the ballot box of this Nation and say to the voters back home that you are voting to put a man there who has no other qualification than that he can vote and that he lives in the district, then you are saying to all the people who manage elections and who are chosen as judges of election in the present system, that you are not going to require of referees anything other than residence and voting qualification, but they can supervise the ballot box as they please.

Mr. JONAS. Mr. Chairman, will the gentleman yield?

Mr. HEMPHILL. I yield.

Mr. JONAS. Is it not true that the referee will occupy a very, very important position if this bill passes and, therefore, it is necessary to see that the person chosen be qualified to discharge the important duties assigned to him if this bill is enacted?

Mr. HEMPHILL. The gentleman is correct. Those of you who are not lawyers, I want you to listen to this, considering rule 53, which is the rule providing for the appointment of special masters by the district courts of the United States, certain decisions have come forth which have interpreted that rule. They say: "Do not refer anything to a master except in unusual cases." It is the exception and not the rule in Federal courts; and since the courts have held it is the exception and not the rule, the courts of the Nation even up to the Supreme Court have recognized the fact that when you take power away from the courts and put it into the hands of the master you are taking an extraordinary proceeding.

Under the rule the master is appointed to help the court and his appointment and his activities are only for the purpose of assisting the court to get facts and arrive at the correct result—*Webster Isenlor, Inc.*, v. *Kalodner* (145 F. (2) 316).

Where issues are complicated and complex the district court has the power, in its discretion, to appoint a special master, but such power should only be exercised in exceptional circumstances. See *Fraver* v. *Studebaker* (11 F.R.D. 94).

If you vote for this referee proposal and fail to write in qualifications, this legislation will cause unending trouble and litigation. Your vote will rise to haunt you. Do not say you had no warning. Say by your vote you would not listen or did not care.

Mr. McCULLOCH. Mr. Chairman, I rise in opposition to the pending amendment.

Mr. Chairman, the bill that is before the Committee provides that the referee shall be a qualified elector of the judicial district in which the case arises. May I remind the members of the Committee that the requirements provided in the amendment offered by the gentleman from South Carolina are greater than the requirements to become the Chief Justice of the United States or of any Justice of that Court.

Mr. HEMPHILL. Mr. Chairman, will the gentleman yield?

Mr. McCULLOCH. I yield to the gentleman from South Carolina.

Mr. HEMPHILL. I thank the gentleman. May I ask the gentleman, his amendment and the Celler substitute states they are dealing with what you have professedly proclaimed as the sacred right of the ballot box. You are taking it away from the ordinary judicial processes, with the exceptions that have been mentioned.

Now, do we not need every safeguard we can get that this is not a potential monstrosity and not to be used for political purposes?

Mr. McCULLOCH. May I say to the gentleman the provisions of the bill that is before us have adequate safeguards.

Mr. Chairman, referees or masters in cases of law and equity in the United States have no greater qualifications and probably not so great as those required in my bill. I see no reason for bringing into this legislation qualifications far above those required of a referee in bankruptcy or a receiver in a court of equity in a case that might be passing upon property worth millions if not billions of dollars—General Motors and Du Pont, for instance—or other human rights.

I trust that the Committee will reject the amendment offered by the gentleman from South Carolina [Mr. HEMPHILL].

Mr. RAINS. Mr. Chairman, I ask unanimous consent to extend my remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. RAINS. Mr. Chairman, I do not think we should refer to the bill now under consideration as a civil rights bill. For it is, in purpose and intent, a Federal intervention bill—Federal intervention in State election machinery, Federal intervention in State owned and operated school systems, Federal intervention in the whole area of State jurisdiction.

The Justice Department clamors for referees or registrars to meddle with State voting machinery. The Justice Department says it is imperative that title 1 of this bill be enacted to make the use of force or threats of force in school integration cases a Federal crime. My distinguished colleague, the gentleman from Louisiana, who serves so ably on the Judiciary Committee, and who has closely followed this bill since it was offered, has already presented a detailed report on the very dangerous propositions included in this legislation.

I do not see how any Member of Congress can fail to understand the significance of all of these Justice Department demands. They represent not merely a wedge into ultimate usurpation of States rights but rather a revolving door.

Title I deals with the obstruction of court orders relating to school integration. As you gentlemen are doubtless aware, the language of this section is highly questionable insofar as the constitutionality is concerned and I believe that when we amend the criminal code, as this section would do, we must be very specific. In this instance, freedom of speech is obviously involved and I am opposed to any legislation which tampers with our most basic heritage in so broad and sweeping a manner.

Title III, relating to Federal election records, is in my opinion unconstitutional in theory and certainly would be in practice. I do not think Congress has the power under our existing Constitution to require the States to take this action and I do not believe our States would grant this power even if Congress offered such a proposal in the form of a constitutional amendment.

The same applies to the last-ditch attempt of the Attorney General to attach his voting referee proposal to this bill. He could not get this measure in committee so he arranged for it on the House floor. It is now presented to us after having circumvented public hearings and the conventional channels of parliamentary procedure.

The Constitution of the United States expressly reserves to the States the power and right to control elections. Yet today we are being asked by the administration to empower Federal judges to determine our poll lists. There is little difference between the referee plan and the registrar plan—they both lead to the same end and by now it should be apparent to everyone that this administration is fanatically dedicated to that end, whatever the means, whatever the cost.

Mr. Chairman, we in the South have had some historical experience with the sort of monster which this legislation could so easily create. I am referring to

the iniquitous Freedmen's Bureau, one of the many abuses which my State suffered during Reconstruction. The bill which you are now considering is taken in large measure from Reconstruction laws and proposals.

If you doubt this, let me refer you to the Congressional Globe of the 1st session of the 39th Congress, 1865–66.

There you may read some of the same arguments which are today being offered for this civil rights bill. They were debating a similar proposition in this very Chamber back in 1866 when we in the South had no representatives in the Congress. During that shameful session, the virus of Federal intervention in State elections was first conceived as a punitive measure against the 11 Southern States which had constituted the Confederacy.

If you read the Congressional Globe of that day, you will find that there were a few legislators from the North and the East who resisted these measures with all their strength, and they warned that such legislation would destroy all States and wreck our constitutional government.

Let me remind you gentlemen, one and all, that while today you may send Federal registrars or referees or judges to tamper with Alabama's poll lists, tomorrow these same officials will be on your own doorsteps. They may be filling out the poll lists in Springfield, in Sacramento, in Schenectady, and the day may come when there will be no reason to have an election, for the Justice Department will determine the results.

If our sovereign States are not to retain the right to hold their own elections, what rights may a State possess? Any further judicial aggression against the respective States can lead only to their destruction as effective units of government, for all of their powers will have been usurped.

One of these days, Mr. Chairman, the American people will rise up in a collective outrage at the time and the expense which Congress devotes to so-called civil rights bills. I am certain that this year the Senate and the House will spend more time by far on this subject than we will spend in considering our national defense efforts against a confident and growing power which has no regard at all for any kind of human rights.

Let us put our efforts where they are most needed. Let us preserve our own freedoms which are based in our constitutional concept of the balance of powers between State and Federal Governments.

I urge that the pending bill be defeated. If we must have more Federal intervention, let us have it in the space above us where our achievements will determine whether or not we are to survive with any rights at all.

The CHAIRMAN. All time has expired. The question is on the amendment to the substitute offered by the gentleman from South Carolina [Mr. HEMPHILL].

The amendment was rejected.

Mr. JONAS. Mr. Chairman, I ask unanimous consent to extend my remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. JONAS. Mr. Chairman, I cannot understand why the most ardent advocates of this legislation would oppose the pending amendment. It would not emasculate the bill, it would not impede its implementation, and it would not interfere with any of the objectives sought to be attained. It is a reasonable amendment and by refusing to accept it, and by refusing to accept a number of other clarifying amendments, those who are leading the fight for the bill are in effect saying that the House must accept it as written without the crossing of a "t" or the dotting of an "i." The proponents undoubtedly would have picked up considerable support on final passage if they had been willing to accept this amendment and several others of a similar nature that have been offered during the course of the debate.

This amendment would simply impose a few reasonable qualifications upon those who may be selected as voting referees. The only qualification in the bill so far is that the voting referee must be a qualified voter in the district in which the case arises. Yet he is given power under the bill to conduct hearings, to make findings of fact, to interpret statutes, and to formulate conclusions of law. In some respects his authority is equal to that of the presiding judge, yet it is argued here that the only required qualification should be that he himself be a voter in the district.

It has been argued in opposition to the amendment that similar qualifications are not prescribed even for judges. The difference, of course, is that the Senate of the United States passes upon the qualifications of the individual appointed as a Federal judge, and it is not only the prerogative but the obligation and responsibility of the Senate to investigate judicial nominees and determine their qualifications by investigation, hearing, and discussion.

But this bill would create a separate judicial officer called a voting referee without setting up any standards, laying down any guideline, or establishing any qualifications whatsoever for the position. I believe the amendment is a reasonable provision and again say that I am surprised that the proponents of the legislation are not willing to accept it. I shall vote for the Hemphill amendment and assert that its adoption will not to any degree whatsoever interfere with or militate against the right of any person to vote.

Mr. WILLIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WILLIS to the substitute of Mr. CELLER to the amendment of Mr. MCCULLOCH: On line 4, page 2, after "a", insert the word "continuing".

Mr. WILLIS. Mr. Chairman, I have offered a number of amendments; but, outside of this one and probably another one I will offer after a while, I will have no more amendments to this referee proposal personally, and probably none by myself to the major bill under consideration, H.R. 8601. As a matter of fact, I shall not take much time on this amendment.

The amendment is to the very first sentence of the bill, which reads as follows:

In any proceeding instituted pursuant to subsection (c), in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a), the court shall, upon request of the Attorney General, and after each party has been given notice and the opportunity to be heard, make a finding whether such deprivation was or is pursuant to a pattern or practice.

This speaks about the past, "was" or "is." In other words, under this language, if a Federal judge finds that 2 years ago, 3 years ago, 10 years ago there was a pattern or practice of discrimination, then he appoints the referee. The only thing in the world my amendment would do would be to require that this alleged pattern or practice of discrimination is pursuant to a continuing pattern. Let it be assumed, for the sake of argument, that 5 years ago there was a pattern or practice of discrimination. Do you not think that before going into the radical provisions of this bill, permitting the appointment of a referee, that they should bring the pattern up to date; that it is a continuing thing; that it exists at the time of the trial? That is exactly the reason for those words, that if he finds that the discrimination was or is pursuant to a pattern, then we are given the shot of this bill. We can scratch the word "was" and insert the words "pursuant to a continuing practice."

Now, I do not want to point the finger at anybody, but believe me, I have assumed, by virtue of discussions at high levels, that this amendment would be accepted. So, the only thing I am trying to do by this amendment before we get a referee in the picture and before the referees give voting certificates to everybody in the affected area, at least there be shown that the pattern of discrimination is something that is present, that exists, and that they cannot require the appointment of referees and permit the referees to issue voting certificates without showing that the alleged discrimination is going on currently or continuously.

Mr. HOLTZMAN. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from New York.

Mr. HOLTZMAN. Under this bill, on line 10, would it not be necessary for the person claiming to have been deprived or denied the right to register to vote to establish that he made application and that he was again denied the right, pursuant to this practice?

Mr. WILLIS. That is correct.

Mr. HOLTZMAN. Would not that mean that it is, in fact, a continuing situation that would have to be proved?

Mr. WILLIS. No; not at all. The language that the gentleman just referred to was one more of the refinements that at certain discussions was agreed to. We appreciate that. It goes a part of the way, but it does not meet

what I am talking about now, for this reason: True it is that after the referee makes a finding of discrimination, the registrar of voters may be permitted to purge himself, if that is the word, of the accusation, and that the people interested in voting must attempt to vote after the decree, but that person may never have gone before. That is incidental, and that is rather outside the establishment of the pattern or practice.

Mr. CELLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the use of the word "continuing" would, indeed, be fatal to this bill. You would add an element of intensive, repetitive litigation. A Negro, for example, would be compelled to prove that the pattern or practice originally found by the court in the first instance still continues. In every case that burden of proof to show the continued pattern or practice would rest upon the applicant Negro.

I say with emphasis, in each and every case—and there would be myriads of cases—the presumption, which is the very keystone of the bill, the presumption of pattern or practice would be destroyed. If you want this bill you cannot favor this amendment. If you do not want the bill then you must favor the amendment.

It was to prevent the constant and the continuing appeals to the court, it was to prevent the repetition of cases by the score, that this amendment was devised. The pattern may have existed last week but not this week; last month but not this month. The court would be compelled repeatedly to find in every single case that that pattern or practice continued. This would put us exactly where we were in 1957. And why did we bring forth this bill? Because in the 1957 act it was essential to bring a separate, individual case in every one of those matters where there had been discrimination. To obviate the bringing of so many, many individual cases was the reason for this bill that we now have and the setting up of this presumption of pattern or practice.

If you have to have each applicant who wants to register and to vote be compelled to assume the burden of a continuing pattern or practice, you vitiate the whole bill, because that would have to be done first before the referee in every instance. Then the referee would have to go back to the court and have the court make a finding or not make a finding. For that reason I do hope the Committee will vote down this amendment.

Mr. SMITH of Virginia. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, all this amendment does is to make it clear that there is a continuing practice before the judge can determine that there is a pattern. In other words, it is an effort to find a current practice, a continuing practice, that exists now.

The statement of the gentleman from New York [Mr. CELLER] just made that this would require every applicant to prove again the pattern illustrates the futility, I might say, of trying to write a complicated bill on the floor of the House under the dictates of the Attorney General. No amendment can be seriously considered here without the approval of the Attorney General. Everybody knows that.

The gentleman from New York is entirely mistaken in his argument because, in the very next sentence, his bill provides that this continuing practice once having been determined by the judge remains in effect for 1 year. Nobody has to prove anything about the current practice after it is found by the court to exist.

The gentleman from Louisiana [Mr. WILLIS] mentioned a conference that was held on this very subject and he said it was assumed that it was agreed. Well, the gentleman was very modest in using the word "assumed." I happened to be at the conference and I suggested that it ought to be designated as a "current practice." Those who are proposing the bill and were for the bill saw the reason of that and said, "Well, we don't like the word 'current,' let us use the word 'continuing.'" We thought that did the same thing to all intents and purposes and accepted it. In other words, what we are trying to avoid is having evidence presented that maybe 5 or 10 years ago there was a practice that no longer exists. That is all we wanted, a practice that is existing at this time. That is all the word "continuing" does. After that decision of the judge that a current or continuing practice exists, then it lasts for a year under the very language of the bill:

> If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for 1 year and thereafter—

Until the court finds that such practice no longer exists. What else do you want?

Mr. COOLEY. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Virginia. I yield to the gentleman of North Carolina.

Mr. COOLEY. I wonder if the chairman of the committee would accept the word "exists," "the existing pattern," instead of "continuing"?

Mr. SMITH of Virginia. It would be the same thing. Our difficulty is that we cannot do this on the floor of the House, although we are supposed to be writing the bill. Before you can put a word in or put a comma in or a period, or before you can cross a "t" or dot an "i," you have to go down and consult with the Attorney General, because he is writing it, the House of Representatives has delegated its legislative duties to the Attorney General.

Mr. COOLEY. I am sure the chairman of the committee would be very glad to consult with the Attorney General.

Mr. SMITH of Virginia. I do not think you get anywhere by consulting with the Attorney General. That has been my experience.

This is such a simple amendment, such an obviously desirable amendment, that it is difficult to see why anybody should object to it. It is only the arbitrary decision of the Attorney General that he does not want any changes in his bill. If that is the way the House feels about it, we are going to have a few other little innocuous amendments here before this is over, but it is hardly worthwhile as long as the House is going to answer the dictates of the Attorney General. I had not thought that my friends on the right over here, the Democrats, were so fond of this Republican Attorney General, but they seem to be accepting his dictates on everything and without any reason for it. I think we at least ought to exercise a little bit of sensible discretion of our own. That is all we ask you to do. But if you have to ask the Attorney General about it before you do anything on this bill, you might as well fold up.

Mr. HOFFMAN of Michigan. Mr. Chairman, I move to strike out the last word.

It is with a great deal of regret that I hear the gentleman from Virginia criticize the Attorney General. I cannot see why he criticizes the Attorney General. I have been trying for weeks to get the Justice Department to prosecute some racketeers. I do not know who down in the Attorney General's office it is, but I am sure it is not the Attorney General, but someone tells me you cannot prove motive, that is to say, you cannot prove that this extortion is carried on for any benefit. Of course, if Hoffa does it that is bad. If Reuther gets it, and he must get it somewhere because the union had $1,000,000 to spend in the Kohler strike, that is all right, naturally there was no motive back of that, nothing to gain. That just comes about naturally. Now if I had any suggestion at all, and I would not venture to make one, even though we have been several days on the debate on this question, but I wanted to ask my—well, I will just say I am a great admirer of the gentleman from Virginia, and I do not want to go so far as to claim to be his friend; but I have been wondering why it is, and what became of that coalition that we had back in the time when we put through the Taft-Hartley bill when we overrode Mr. Truman's veto. Do you remember? There was a coalition of southerners with somebody on this side—I do not know what to call them, but I was one of them and that coalition was working pretty good. Last year, they had what they said was a coalition, which was later denied by the Republican leadership—after they had gotten what they wanted over there they said there was nothing to it. Now where is that coalition? They denied it but there must have been one for we did not have the votes. They have had one on this side—on my side—we have had one with somebody over here on this side where my friend, the gentleman from California [Mr. HOLIFIELD] and the gentleman from Illinois [Mr. DAWSON] sit, we had one with them as the opposition, and that one we had is not working out so good and we do not have one getting anywhere, but it has been all right when it comes to obstructing. How come that my friend, the gentleman from Virginia, does not see the gentleman from Indiana on our side and

get that old coalition working or did something happen to somebody? Republicans would get more votes come November that way than we will by this new alliance with the extreme leftwing on the Democratic side.

Mr. SMITH of Virginia. Mr. Chairman, will the gentleman yield?

Mr. HOFFMAN of Michigan. I yield.

Mr. SMITH of Virginia. I will say to the gentleman that the coalition which you are speaking of is all in the past and that was before the Attorney General took over the functions and the dictatorship of the House of Representatives.

Mr. HOFFMAN of Michigan. He did?

Mr. SMITH of Virginia. Yes; he did.

Mr. HOFFMAN of Michigan. Well, how about that? What do you know?

Mr. SMITH of Virginia. Mr. Chairman, will the gentleman yield further?

Mr. HOFFMAN of Michigan. Yes; I yield.

Mr. SMITH of Virginia. I do not know whether the gentleman has noticed and has seen just how far this is the Attorney General's bill because, in the very first sentence of it, it is provided that the judge cannot turn a wheel and he cannot give anybody anything because he must have the application upon the request of the Attorney General. In one of these proceedings do you provide for any voting here—this is not a bill for the relief of voters—this is a bill for the relief of the Attorney General. The Attorney General has to ask the judge to do these things before the judge can turn a wheel.

Mr. HOFFMAN of Michigan. The judge cannot do a thing?

Mr. SMITH of Virginia. No, indeed. A thousand Negroes can go to court and ask the court to give them relief and help to get their right to vote and he cannot do it—no—because he cannot move, without an application from the Attorney General.

Mr. HOFFMAN of Michigan. Can you not do something with the Republican leader to correct that very, very bad situation? You fellows, that is the so-called conservatives, have been buddies for so long. What has happened?

Mr. SMITH of Virginia. I just do not seem to be able to make my good friend—and I am his friend whether he is my friend or not—I cannot seem to be able to make my friend understand that the Attorney General has taken over the House of Representatives.

Mr. HOFFMAN of Michigan. Do you mean it was the Attorney General who has been doing what has been done to me on this labor thing? Do you mean he has been doing that?

Mr. SMITH of Virginia. I am just telling you what he is doing in this bill—and he wrote it. Under this bill, a thousand Negroes can apply to the court for relief and to get their right to vote, and not one of them can get it unless the Attorney General acts.

Mr. HOFFMAN of Michigan. If they all would vote the Republican ticket, and prove that they did, surely any Attorney General would be grateful.

Mr. SMITH of Virginia. Of course. I started to say this was a bill for the political relief of the Attorney General. But, the Attorney General can give or withhold the right to vote to any Negro or any number of Negroes in any city or town in the United States, and nobody—nobody, not even the judge, can give them relief under this bill. You fellows who think you are so smart in getting this bill through—I do not know whether you know what you are doing. I do not think you do, and I do not think you would be voting for this bill if you knew what you were doing.

Mr. HOFFMAN of Michigan. Mr. Chairman, will the gentleman from Virginia yield to me?

Mr. SMITH of Virginia. This bill is putting this power in the hands of the Attorney General and he can give the right to vote to your people or withhold that right.

Now, Mr. Chairman, I yield to the gentleman from Michigan.

Mr. HOFFMAN of Michigan. I thank the gentleman. I was dreaming last night maybe there was an agreement on that—maybe we might get more votes over there and in the South by going along with you more than we will ever get from those whose views are so far to the left of what we think and believe.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. SMITH of Virginia. Mr. Chairman, I ask unanimous consent that the gentleman from Michigan may have 3 additional minutes.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. HOFFMAN of Michigan. I yield to the gentleman from Virginia.

Mr. Chairman, I yield back the time.

Mr. JOHANSEN. Mr. Chairman, I move to strike out the last word.

I can fully understand a feeling that by now just about everything has been said that there is to say on the issue before us.

Yet I cannot drive from my own mind a deeply disturbing impression that a number of the really important things remain unsaid.

Has anyone said what I gravely fear the facts all too obviously indicate—that even as we debate here and wrangle over legal terminology, relations between the races in this country are seriously deteriorating?

Has anyone ventured to predict with confidence whether what we do here will halt or even lessen that deterioration or whether, unhappily, it will produce only more of controversy, more litigation, new demands for still broader legislation, more mass demonstrations, further breakdown in human and understanding communication between the races?

The President's appeal last week for biracial conferences in the South has significance, in my judgment, both encouraging and unfortunate.

Insofar as it recognizes the need for a renewal of approaches through other media and methods than legislation, police power, the courtroom, and mass demonstrations, his statement is timely and ought to be welcomed by all concerned.

But has anyone—outside, at least of those from the South—raised the pertinent question as to why the President seemed to limit this proposal to the South?

Has anyone, outside of the South, risen to acknowledge in candor and humility that insofar as we must regard racial relations and the related grievances and demands—reasonable and unreasonable—as a problem it is a national and not a regional or sectional problem?

Even more to the point, has anyone given attention to the possibility that all of us—throughout the land, white and Negro, including we in the Congress—have become the captives of the legislative, the police power, litigation type of emphasis to a degree that it not only overshadows but dangerously handicaps the effort to seek and attain voluntary, free, informal, human-type approaches and solutions?

In the demands for Utopia—and in the methods being pursued to meet those demands—are we foreclosing the methods of human progress of the sure and lasting type?

Not enough earnest consideration has been given, in my judgment, to this crucial question.

There are other areas of silence in this long and interminable discussion which I feel it urgently important to mention—in all kindness and charity.

Less has been said than needs to be said by them, I must say to my beleaguered friends from the South, less has been said than needs to be said by them in this debate in line with the statement of the most frequently dissenting former member of the Civil Rights Commission, Governor Battle of Virginia:

> I concur in the proposition that all properly qualified American citizens should have the right to vote.

I can attribute this silence, in a manner of speaking, to a sort of regional invocation of the fifth amendment safeguards against involuntary mass, blanket self-incrimination.

Yet I believe that anything which our friends from the South could find it in their hearts and minds to say by way of reassurance on this score would immeasurably strengthen public support for their rightful desire for patient understanding and for a resumption of the methods of voluntary gradualism which have brought so much of gain and progress for both of the races in that region of our country.

There is another area of silence and of what sometimes seems to me to be deliberate unconcern from some important quarters.

The Civil Rights Commission report acknowledged that "the right to vote is established in most of the country, including many areas in the South."

Yet the matter seems to drop there—and the fact of substantial progress on this score in the South has been all but totally ignored by those whose acknowledgment of it would do most to end the recriminations and heal the breach.

Why has there not been, both from the North and from the Negro leadership, more generous acknowledgment of

that progress? But most important, why has there not been by the Commission and the Congress a painstaking pinpointing of the factors which have accounted for those gains in the South? Does no one think that the factors—many if not most nonlegislative and noncompulsory—which have accounted for these gains might not be the clue to substantial further gains? Or are we too impatient for Utopia?

I am profoundly disturbed because no one has risen in this House—from those areas and segments of our country to which we could reasonably look—to repudiate an incredible viewpoint inserted in the RECORD on February 29.

This viewpoint, contained in an article from a Negro publication, New York Age, seems to say that there is no place among Negro leaders for diversity of viewpoint or minority opinions on the subject of racial relations.

It seems further to imply—as I regret some Negro leadership has seemed to imply—that any leader of that race who ventures to offer views favoring compromise, cooperation, moderation, patience, and tolerance is a betrayer of his race and is playing into the hands of a supposed white man's strategy of "divide and conquer"—as though, between the races, there must be implacable hostility.

What a tragedy that this wicked doctrine has not been renounced by those who alone could give meaningful renunciation.

Is there no surviving wisdom, my friends, in the counsel offered in 1895 by Booker T. Washington, against the dangers and limitations of the methods of "artificial forcing" in this difficult and delicate area of human relations?

Is there no one—outside of the South where such views apparently are regarded as suspect—to plead the wisdom of this sober and solemn counsel?

There is Negro leadership which frankly acknowledges that the current demonstrations throughout our country—North and South—staged in alleged support of Negro rights are mass movement activities. There are those in both races and both parties who see great potential in political bloc activities of our Negro citizens. Is there no one who dares to say, or thinks it important to say, that this is segregation of the most dangerous type and that it can never be reconciled with true civil rights for any American, white or Negro?

I was once challenged by a Negro member of an audience in my district when I pleaded for greater reliance on "the law written on the fleshy tablets of the heart." Did I, he asked me, believe that laws against murder should all be repealed and total reliance placed on this law written on the fleshy tablets of the heart.

I gave him the only answer possible. I replied that, of course, I would advocate no such thing. But, I added, I would very much deplore having to live in a community in which the only restraint and safeguard against murder was the fact that it was against the law.

Today, for all of our shortcomings, I cannot believe that we live in an America in which, for the promotion of justice and progress in racial or any human relations, we must rely solely upon the fact that certain violations, wrongs, or abuses "are against the law."

I pray that my fellow Americans and my colleagues in this House still share that confidence and faith in the inner law of the heart.

Mr. ROBISON. Mr. Chairman, I ask unanimous consent to extend my remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. ROBISON. Mr. Chairman, the so-called voting referee amendment that has now been added to what will undoubtedly go on to become the Civil Rights Act of 1960 has been born in travail and, for some, pain. All of us regret any wounds that may have been caused or reopened, but we can join in hoping that such will not prove to be lasting and deep.

Though I have not taken an active part in the thorough, and, for the most part, objective debate that has preceded today's action, I have followed that debate diligently and with considerable concern. Most of my concern has been prompted by my awareness that we were deliberately intruding into areas of responsibility that I would normally consider as having been reserved, under our Federal Constitution, to the various States and their political subdivisions.

My record will show that I have voted many times in support of the principle of States rights. I fully expect, so long as I may be privileged to continue to be a Member of this legislative body, to do my best to prevent a further erosion of the intent and effect of the 10th amendment. However, Mr. Chairman, as has been pointed out so often in the past 9 days, we are attempting to deal here with the basic right of all our citizens to vote, regardless of their race, color, or creed. Such a right springs from the very heart of our unique system of self-government, and is the cornerstone of the very foundation upon which our Republic was erected.

The 14th amendment purports to guarantee such a right for all to vote. Unfortunately, that guarantee has had little meaning for the great majority of the Negroes of the South. In seeking to make that guarantee more meaningful, the action we have finally taken becomes not only necessary but proper.

Let us, however, all be fair enough to recognize that merely making it more difficult for any State to further continue a pattern or practice of discrimination against the voting rights of certain of its citizens will not end the problem of racial discrimination and prejudice. The most we can hope it will do is to give the southern Negro a tool which, if wisely used, may serve to help him improve his stature in our society as well as to protect the rights and privileges that have been purported to be his by virtue of the Constitution.

We must recognize that in some ways there is as much prejudice against the Negro in Harlem as there is in Biloxi, and that all such prejudice is bred in ignorance and in folklore and cannot be erased, anywhere, by legislative fiat or court edict, but only through the processes of enlightened education and good will.

In the life or death struggle with the forces of worldwide communism in which America now finds itself, it is my belief that our Nation will have need of the selfless services of each and every one of her citizens, no matter how high or low be their social status and regardless of their religious tenets or the color of their skin.

It is my conviction that we can only win in the struggle with communism if we, all of us, can somehow recapture a sense of partnership in response to the challenges we face, and that, perhaps, only if we can so find that sense of partnership are we worthy of winning.

Mr. PELLY. Mr. Chairman, the members of the Washington State congressional delegation were sent individual copies of a letter addressed to Vice President RICHARD M. NIXON by David Barnette, president of the Washington State Baptist Convention. It was written in line with our current debate on civil rights and proceeds from the churches' vital interest in this important issue.

The position taken last year at the annual meeting of the Washington Baptist Convention was as contained in a resolution adopted as follows:

> We recommend that our churches continue to share in efforts to solve problems of discrimination because of racial or national origin in church membership, residential housing, employment, cemeteries, and education, and in any other areas where this discrimination exists.

President Barnette wrote Vice President NIXON of the churches' deep concern to see steps taken by which all people in the United States may have equal opportunity in whatever direction they may choose to go and therefore the Baptist convention supported legislation to that effect.

Mr. Chairman, the civil rights bill before the House today is to protect voting rights, as guaranteed in the 15th amendment to the Constitution of the United States, and is directed to the very point supported by the Washington Baptist Convention. Once all citizens have the right to vote they can effectively and peacefully through their ballots decide the direction in which they may choose to go. The present legislation before us goes to the basic issue and will be supported, I am sure, by all Washington State Members of Congress.

As for Vice President NIXON, his record and position on civil rights and against discrimination is well known. There can be no doubt on this score. His views in favor of legislation similar to this bill are a matter of record.

Mr. CELLER. Mr. Chairman, I ask unanimous consent that all debate upon the pending Willis amendment close in 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Georgia [Mr. FLYNT].

Mr. CELLER. Mr. Chairman, I ask unanimous consent to yield my time to the gentleman from Georgia [Mr. FLYNT].

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. FLYNT. Mr. Chairman, I listened very carefully a few minutes ago to the explanation of this amendment by the author of it, the gentleman from Louisiana. I listened equally attentively to the objections to it made by the chairman of the Committee on the Judiciary. I just cannot believe that the gentleman from New York understands the purpose of this amendment. I cannot believe that he or any member of the Committee on the Judiciary would be opposed to the inclusion of the word "continuing" in the place where the amendment, offered by the gentleman from Louisiana [Mr. WILLIS], seeks to include it if they understood it.

For this reason I want you to listen a minute to what it could do. The Celler amendment as written, without the inclusion of the amendment offered by the gentleman from Louisiana, would provide no time limit whatsoever. You could take the oldest citizen in any community—say he is 80, 90 or 100 years old—and under the provisions of the Celler substitute as written, if he had been deprived of a vote 60 years ago he would still have the right to the protection of the referee under the provisions of the Celler substitute. I certainly cannot believe that any member of the Committee on the Judiciary or any Member of the House would want to go back that far. The only purpose of this amendment, as I see it, and as so completely explained by the author of the amendment, the gentleman from Louisiana [Mr. WILLIS] is to put a reasonable time limit, to have a current interpretation of the facts as they exist at this time not as they might have been many years ago.

In all fairness, in all logic, in all reason this amendment should be approved. It will in no way detract from the efficacy of the legislation; however, it will provide a reasonable time limit within which a court action could be brought.

Mr. Chairman, in this legislation as written a man may come in and make a statement, a simple statement, not sworn to, not under oath or affirmation of any kind, and invoke the protection of the Department of Justice, the Attorney General and the Federal court in every Federal judicial district in the United States. I certainly cannot believe that anyone wants to write something into law here without listening and listening carefully to the words and language of the amendment such as the one proposed by the gentleman from Louisiana.

Mr. Chairman, I have reason to believe, and I think that the members of the Committee on the Judiciary who favor this legislation will agree, if they will be honest with the Members of this House, that if this amendment offered by the gentleman from Louisiana [Mr. WILLIS] had been proposed in committee, it would have received almost a unanimous vote of the members of the standing committee which has legislative jurisdiction over this very legislation. There is no reason why anybody should object to including this language, the effect of which is only to put a reasonable time limitation within which to bring proceedings under this act.

The CHAIRMAN. The Chair recognizes the gentleman from North Carolina [Mr. WHITENER].

Mr. KITCHIN. Mr. Chairman, I ask unanimous consent that the gentleman from Alabama [Mr. ELLIOTT] and I may yield our time to the gentleman from North Carolina [Mr. WHITENER].

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. WHITENER. Mr. Chairman, I rise in support of the amendment proposed by the gentleman from Louisiana [Mr. WILLIS] which, it seems to me, is one which should appeal to the reasoning of every Member of this body. I suppose that other language could have been used to convey the meaning which the gentleman from Louisiana sought to convey when he used the word "continuing" in his amendment. We might have said in this amendment "pursuant to a presently existing pattern" or words to that effect. So, I see no reason, as my good friend, the gentleman from Georgia [Mr. FLYNT] has said, why we should not be fairminded enough to insist that if we are going to adhere to this language "pattern or practice," it should be limited to a pattern or practice currently existing in the so-called area where this voting referee is to operate.

You know, in the law of property, in an action in ejectment, where the question of boundary is involved, one of the requirements before you can offer evidence as to the boundaries of a piece of land by reputation is that the reputation must have been established ante litem motam. Now, that is a wonderful rule of law or rule of evidence in a property case. But, to be sure, no one who is familiar with legal procedure would suggest that the doctrine of admission of evidence of reputation ante litem motam in this sort of situation should be attempted.

Now, if the gentleman from Colorado wants me to yield, I will be happy to do so.

Mr. ROGERS of Colorado. Would the gentleman say what "continuing" means? What is your understanding of the word "continuing"?

Mr. WHITENER. Well, I would say to the gentleman that in the context here it would mean, as I have just said, currently existing or presently existing. In other words, it is not speaking of what happened in the past or what might happen in the future. The use of the word "continuing" here, as I construe it, would mean that as of this date, now, a pattern or practice exists, and therefore that that would be a sufficient basis for the designation of a voting referee.

Mr. ROGERS of Colorado. Mr. Chairman, if the gentleman will yield further, if you represented a registrar who was hailed into court and this amendment was in there, would you then say to the judge, "Well, when he established a pattern or a practice of discrimination, that is sufficient for you to enter the order." Would you agree that that would be a proper interpretation if you represented the registrar?

Mr. WHITENER. My answer to the gentleman is one which I am sure he does not really need—but he just wants to hear me say—and that is that it seems to me that the gentleman from Louisiana [Mr. WILLIS] in the drafting of this amendment has used language which is perhaps preferable to that which I would have used, in that the language which he uses requires more than a presently existing or currently existing practice. His language would require that it must have been over a period of time and would not be limited to the date of the appointment of a voting referee.

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield further?

Mr. WHITENER. I am happy to yield.

Mr. ROGERS of Colorado. Is that not exactly the point? It must be a pattern that has continued to exist for a long time, or some time at least prior to the date of the filing of the application by the Attorney General.

Mr. WHITENER. I take it, then, that the gentleman has some language which he could suggest to the membership of the House which would spell out specifically that you do not mean what existed in 1870 or some date in remote history.

Mr. ROGERS of Colorado. The point simply is this, that under the present bill it says that he shall make a finding pursuant to a pattern or practice.

Mr. WHITENER. Which existed when?

Mr. ROGERS of Colorado. At the time the court has the proceeding.

Mr. WHITENER. I can only speak for myself but I would say to the gentleman that if he will offer an amendment using the exact words that he has just used—a pattern or practice at the time that the court is requested to appoint a referee—I shall do everything I can, in my feeble way, to help the gentleman.

Mr. ROGERS of Colorado. It is already in the bill, so there is no use to draft an amendment.

Mr. WHITENER. The gentleman and I have not agreed on many things during this debate and I see that that pattern and practice still continues.

Mr. KITCHIN. Mr. Chairman, will the gentleman yield?

Mr. WHITENER. I yield to the gentleman from North Carolina.

Mr. KITCHIN. In answer to the gentleman from Colorado [Mr. ROGERS], let me refer to the wording as it now is. It says, "after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice."

I think the chairman of the committee hit the nail on the head when he said that in his opinion this would vitiate the whole bill. Premeditatedly they want to leave it hanging in the air so that they can bring up these people who they contend may have been deprived of this right 20 or more years ago.

Mr. WHITENER. Of course, the gentleman from Colorado would like to elect

another Senator Revels from Mississippi, or something of that sort, I am sure.

Mr. FLYNT. Mr. Chairman, will the gentleman yield?

Mr. WHITENER. I yield to the gentleman.

Mr. FLYNT. Mr. Chairman, I would like to say with reference to the last comment by the gentleman from Colorado [Mr. ROGERS], a member of the Committee on the Judiciary, that the very purpose of the Willis amendment is to do what the gentleman from Colorado says is already in the bill H.R. 11160. But it simply is not there without the inclusion of the Willis amendment.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WHITENER] has expired.

The Chair recognizes the gentleman from New York [Mr. LINDSAY].

Mr. LINDSAY. Mr. Chairman, I rise in opposition to the amendment. I agree with the gentleman from Colorado [Mr. ROGERS] that the language of the bill sufficiently covers any question whether or not we are reaching way back into history. The 1957 Civil Rights Act requires that there be a judicial proceeding in connection with any alleged voting deprivations. As a result of that proceeding the court is empowered to make a finding that such deprivations are or were pursuant to a pattern or practice. If this bill we are now debating has any merit at all it is all wrapped up in this package called the pattern or practice. I submit that in the last few days there has been a series of attempts, of which this is just another, designed to water down the impact of that procedure.

I would agree with the chairman of the committee, the gentleman from New York [Mr. CELLER], that if this amendment were adopted it would result in an additional weakening of the bill.

The CHAIRMAN. The Chair recognizes the gentleman from Colorado [Mr. ROGERS].

Mr. ROGERS of Colorado. Mr. Chairman, addressing myself to the pending amendment, it is very obvious that the only objective and purpose of adding the word "continuing" is to require added proof to establish the pattern or practice. Hence it would result in the defendant, or the registrar, that may be called before the court, saying, "I do not have a continuing pattern or practice of discrimination."

Mr. FLYNT. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Colorado. I cannot yield. I do not have the time.

Mr. FLYNT. Will the gentleman yield if I get him additional time?

Mr. ROGERS of Colorado. Get me the time and I will yield.

Mr. FLYNT. Mr. Chairman, I ask unanimous consent that the time of the gentleman from Arkansas [Mr. ALFORD] be allotted to the gentleman from Colorado.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. FLYNT. Does the gentleman from Colorado believe that the applicant under these provisions should have the right to come in and say that 20 years ago he was denied the right to vote and therefore he is entitled to the protection of this bill?

Mr. ROGERS of Colorado. In the first place, the applicant himself does not make it, the Attorney General of the United States does it under this bill. If you will refer to page 1 of the Celler substitute to the McCulloch amendment, H.R. 11160, it says "in any proceeding instituted pursuant to subsection (c)."

That means we would have to go to the Attorney General, and whenever he files an action to enforce some civil right he must give notice to the other people, and then may come in and prove the pattern.

Let me make this further explanation: Then the Attorney General is the one who makes the application. I do not feel that any Attorney General, however bad he may be in the eyes of the gentleman, would go back 20 years or 6 years. I think we must have at least a little faith in the prosecuting officer that he will bring it current and up to date.

Mr. LINDSAY. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from New York.

Mr. LINDSAY. I think it should be pointed out in addition that on page 2, line 11 of the bill, if the gentleman from Georgia will note, after the pattern or practice has been established, if an individual then comes to the court there must be a finding, first, that he is qualified under State law to vote, and second, that he has since such finding of a pattern or practice been deprived of the right to register or otherwise qualified to vote. Note the word "since."

Mr. FLYNT. In reply to the gentleman from New York, I still say, and the Celler substitute itself says, that at any time if such a pattern existed the court could make a finding that the pattern existed, and he could find that the pattern existed 20 years ago under the provisions of this substitute amendment. The pending amendment is a conforming amendment, in an effort to get the language to speak that which its proponents say they want it to speak.

Mr. LINDSAY. I say once again a pattern or practice is not found until after there has been a judicial proceeding under the 1957 Civil Rights Act.

Mr. ROGERS of Colorado. As the gentleman from New York points out, hence it must be a current one, a pattern or practice that is going on now, before the Attorney General will institute application for the order which results in the appointment of a referee to take certain action.

Mr. WHITENER. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from North Carolina.

Mr. WHITENER. I am sure my distinguished colleague from Colorado, a former attorney general of that State, is familiar with the language of Justice Peckham of the U.S. Supreme Court in the case of *Pope* v. *Williams* (193 U.S. 621, at 632).

Mr. ROGERS of Colorado. That is a violent assumption.

Mr. WHITENER. In that decision, Justice Peckham said the following:

> The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States (*Minor* v. *Happersett* (21 Wall 162)). It may not be refused on account of race, color, or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution. The State might provide that persons of foreign birth could vote without being naturalized, and as stated by Mr. Chief Justice Waite in *Minor* v. *Happersett, supra,* such persons were allowed to vote in several of the States upon having declared their intentions to become citizens of the United States. Some States permit women to vote; others refuse them that privilege. A State, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native-born citizens should be permitted to vote, as the Federal Constitution does not confer the right of suffrage upon any one, and the conditions under which that right is to be exercised are matters for the States alone to prescribe, subject to the conditions of the Federal Constitution, already stated; although it may be observed that the right to vote for a Member of Congress is not derived exclusively from the State law. See Federal Constitution, article 1, section 2; *Wiley* v. *Sinkler* (179 U.S. 58). But the elector must be one entitled to vote under the State statute. (Id., Id.) See also *Swafford* v. *Templeton* (185 U.S. 487, 491). In this case no question arises as to the right to vote for electors of President and Vice President, and no decision is made thereon. The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one. We do not wish to be understood, however, as intimating that the condition in this statute is unreasonable or in any way improper.
>
> We are unable to see any violation of the Federal Constitution in the provision of the State statute for the declaration of the intent of a person coming into the State before he can claim the right to be registered as a voter. The statute, so far as it provides conditions precedent to the exercise of the elective franchise within the State, by persons coming therein to reside (and that is as far as it is necessary to consider it in this case), is neither an unlawful discrimination against anyone in the situation of the plaintiff in error nor does it deny to him the equal protection of the laws, nor is it repugnant to any fundamental or inalienable rights of citizens of the United States, nor a violation of any implied guarantees of the Federal Constitution. The right of a State to legislate upon the subject of the elective franchise as to it may seem good, subject to the conditions already stated, being, as we believe, unassailable, we think it plain that the statute in question violates no right protected by the Federal Constitution.
>
> The reasons which may have impelled the State legislature to enact the statute in question were matters entirely for its consideration, and this court has no concern with them.
>
> It is unnecessary in this case to assert that under no conceivable state of facts could a State statute in regard to voting be regarded as an infringement upon or a discrimination against the individual rights of a citizen of the United States removing into the State and excluded from voting therein by State legislation. The question might arise if an

exclusion from the privilege of voting were founded upon the particular State from which the person came, excluding from that privilege, for instance, a citizen of the United States coming from Georgia and allowing it to a citizen of the United States coming from New York or any other State. In such case an argument might be urged that, under the 14th amendment of the Federal Constitution, the citizen from Georgia was by the State statute deprived of the equal protection of the laws. Other extreme cases might be suggested. We neither assert nor deny that in the case supposed, the claim would be well founded that a Federal right of a citizen of the United States was violated by such legislation, for the question does not arise herein. We do, however, hold that there is nothing in the statute in question which violates the Federal rights of the plaintiff in error by virtue of the provision for making a declaration of his intention to become a citizen before he can have the right to be registered as a voter and to vote in the State.

Mr. ROGERS of Colorado. The gentleman's reading is indeed interesting.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. McCULLOCH].

Mr. McCULLOCH. Mr. Chairman, I rise in opposition to the amendment. The court is not going to pass on a moot question. The Federal courts would always require proof of a continuing trespass or wrong. If the wrong has passed, and no one is being denied the right to vote by reason of race or color, then the court would not entertain the complaint even if the Attorney General brought it, which he would not ordinarily do. Said in another way, our Federal courts usually refrain from doing an idle thing. This amendment, as was the case with several other amendments which we have considered, would require, if it were adopted, an adversary proceeding in hundreds if not thousands of cases, examples of which I can cite but which is not necessary at this time. Such cases have been maintained on three or four occasions heretofore in this debate. This amendment, as were such other amendments, should be defeated.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. McCULLOCH] has expired.

All time has expired.

The question is on the amendment offered by the gentleman from Louisiana [Mr. WILLIS] to the amendment offered by the gentleman from New York [Mr. CELLER] as a substitute for the amendment offered by the gentleman from Ohio [Mr. McCULLOCH]

The question was taken; and on a division (demanded by Mr. SMITH of Virginia) there were ayes 90, noes 120.

So the amendment to the substitute was rejected.

Mr. MEADER. Mr. Chairman, I offer an amendment which is at the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. MEADER to the amendment by Mr. CELLER as a substitute for the amendment by Mr. McCULLOCH: On page 3, line 21, strike out the words "the applicant shall be heard ex parte. His" and insert in lieu thereof "the applicant's."

Mr. MEADER. Mr. Chairman, I have listened to this debate for several days and heard fun poked at the lawyers.

I must say I feel frustrated in trying to write a little constitutionality into this voting referee proposal. I may say that the firm of McCULLOCH and CELLER has done an able job presenting the case of their client, the Attorney General of the United States, who has had more to do with the writing of this legislation than anybody else that I know of.

I may say also that I feel frustrated when I realize that the firm of CELLER and McCULLOCH have the votes to put over their point of view.

All this legislation does is amend the rules of civil procedure. Those rules have been built up during the life of our Republic by statute and by court rule and by decisions in cases, and they are aimed at the purpose of permitting the Government to carry out its policy without depriving individuals of their constitutional rights. My amendment will put a little constitutionality back into the voting referee proposal.

I want to cite a case in this matter of ex parte proceedings, wherein persons are excluded from a fact-finding process upon which punishment for civil contempt can be founded. This is a U.S. Supreme Court case, *Greene* v. *McElroy* (360 U.S. page 474). It is a case involving industrial secrecy. I want to read a passage from that decision. I quote from page 496 of the opinion of the Chief Justice of the United States, Chief Justice Warren:

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the sixth amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witnesses against him." This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, e.g., *Mattox* v. *United States* (156 U.S. 237, 242–244); *Kirby* v. *United States* (174 U.S. 47); *Motes* v. *United States* (178 U.S. 458, 474); *In re Oliver* (333 U.S. 257, 273), but also in all types of cases where administrative and regulatory actions were under scrutiny. E.g., *Southern R. Co.* v. *Virginia* (290 U.S. 190); *Ohio Bell Telephone Co.* v. *Public Utilities Commission* (301 U.S. 292); *Morgan* v. *United States* (304 U.S. 1, 19); *Carter* v. *Kubler* (320 U.S. 243); *Reilly* v. *Pinkus* (338 U.S. 269). Nor as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. *Joint Anti-Fascist Committee* v. *McGrath* (341 U.S. 168–169 (concurring opinion)).

Now, we are ignoring these basic constitutional rights of the individual when we provide expressly that the court must require the referee to proceed ex parte, in a star chamber proceeding, denying the person who may go to jail on the facts found by the referee, from an opportunity to be present, listen to the testimony against him, cross-examine witnesses against him, challenge the authenticity of documentary proof, and present evidence in his own behalf.

We give the defendant in the proceeding contemplated in this bill none of the rights which the Supreme Court has said a man accused of being pro-Communist is entitled to have. I hope we are not going to write one rule of law for the Communist or a person in sympathy with the Communist movement and a different rule of law for officers elected to State or local office.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. MEADER. I yield to the gentleman from Iowa.

Mr. GROSS. The gentleman has offered a good amendment. I wonder if this, too, had to be cleared by the Attorney General.

Mr. MEADER. This amendment was really in the original Attorney General bill, H.R. 10035. There was no provision in there for a mandatory ex parte hearing. We have taken out a good many things that I object to in the various versions of this legislation, but this is one, which was not in the original version, which has been put in during the course of the debate. I think it should be taken out. I am concerned that we seem to be bent on passing an unconstitutional law. I have other amendments which I will propose, and I will say that I will not cast my vote for a law that I believe to be unconstitutional.

Mr. CELLER. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Michigan.

Mr. Chairman, we actually voted on this amendment on a prior occasion, and we voted it down. It now issues forth again, and its fate should be the same as it was before; it should be defeated.

I would say that it is the same old poison in the same old bottle with just a slightly different label, and it would make of every proceeding before the referee an adversary proceeding. That means, in essence, that the rules of civil procedure would prevail in all the proceedings before the referee. I am perfectly willing to have adversary proceedings obtain when it comes to the U.S. district judge in the court, but where you have this avalanche of applications of Negroes, lowly, some without funds, who have been badgered, who have been subject to economic boycotts, I think the story is different. You cannot expect those applicants and that kind of environment that has been spoken about by the Civil Rights Commission, you cannot expect that kind of applicant to be able to master the situation, to be able to get a chance for his white ally in adversary proceedings. Why, there would be a lot of witnesses brought forth by the State registrar; there would be cross-examination, recross-examination, the submission of documents. It would be easy for the registrar to get the documents, but very difficult for the applicant to get documents to disprove what the registrar maintains. So you give with the one hand by this amendment,

but you take away with the other; you would make the difficulties of the applicants almost insurmountable if you would adopt the amendment offered by my distinguished colleague from Michigan.

I reluctantly oppose my colleague because so frequently we agree in the Judiciary Committee. But there are overriding reasons for my disagreement with him at the present juncture, and for these reasons I hope that the Committee will vote down this amendment.

Mr. LINDSAY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the distinguished gentleman from Michigan attempted to make a comparable case out of the Supreme Court decision in Green against McElroy. I submit there is not anything comparable whatsoever in that case. The person the Court was referring to in that case as the accused was an employee in a defense plant who was fired summarily on security grounds. The Court maintained that he should have had an opportunity for a hearing and confrontation.

If the analogy is to be drawn, the accused—of course, when we are talking about the accused in a voting proceeding, he would be the local registrar who, of course, should not be referred to as the accused because this is entirely a civil proceeding; but, in any event, if you do refer to him as the accused he is given a full and fair hearing because he must be made a party to the proceeding and must be given notice and opportunity to be heard. I am quoting and reading from page 2, lines 2 and 3—"After an opportunity to be heard make a finding that such deprivation was or is pursuant to a pattern of practice." Therefore the person who is the accused, if that designation is to be used, is the registrar. He receives notice, he is given a full hearing upon which there may or may not be a finding of a pattern or practice, from which the accused has the right of appeal.

Let it be said further that there is an additional protection in the bill because such a finding may only be applicable to the "affected area," which is defined in the bill. If you will turn to page 6, line 11, the Committee will discover that the term "affected area" is carefully defined as a subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a).

This brings us right back to the registrar who has been given a full opportunity to be heard before the court with right of appeal on the subject of whether or not there has been a pattern or practice. Therefore, I can only reiterate that it is a totally false assumption to argue that there is anything comparable between this situation and the situation which was before the Court in the case referred to, Greene against McElroy.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. MEADER].

The amendment was rejected.

Mr. SMITH of Virginia. Mr. Chairman, I offer an amendment which I send to the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Virginia: On page 2, lines 1 and 2, strike out the words "upon the request of the Attorney General."

Mr. SMITH of Virginia. Mr. Chairman, I reckon this is a pretty futile thing I am doing, but I want to emphasize what I said a while ago in colloquy with the gentleman from Michigan [Mr. HOFFMAN]. I pointed out that nobody gets any relief under this bill except by the grace of the Attorney General, and I want to read that to you because some folks may not have read it as carefully as some others have. The very first sentence in this Celler voting amendment reads: "In the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a), the court shall, upon request of the Attorney General, make a finding," and so forth.

My amendment would strike out the words "upon request of the Attorney General." I do not know why my Democratic friends over here want to leave the matter of whether anybody gets relief under this bill to the Republican Attorney General who wrote the bill. Some may think lightning might strike next year, and that there might be a Democratic Attorney General, perhaps.

Mr. HOLTZMAN. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Virginia. I yield to the gentleman from New York.

Mr. HOLTZMAN. The gentleman has indicated that only the Attorney General's OK would open the door.

Mr. SMITH of Virginia. I did not say that. The bill says it.

Mr. HOLTZMAN. The fact is under section 1983 of the 1957 act an individual has a right to bring such an action.

Mr. SMITH of Virginia. He does not have the right to do the thing that is contained in this section.

We can make all sorts of excuses and bring in old bills and other things, but I am talking about this bill and the plain, specific language therein contained. The language is that nobody can get the right to relief under this bill unless the Attorney General makes the application. There may be a thousand people apply to the court in a city like Jackson, Miss., let us say, and they may say, "We have been deprived of our right to vote. We are entitled to relief under this Celler bill which we heard so much about." It does not make any difference how many people have been discriminated against. It does not make any difference if there is complete discrimination against every Negro in that city. Nobody gets any relief except at the grace of the Attorney General, because the court is prohibited, if you please, from putting this bill into operation and giving anybody any relief except upon the application of the Attorney General. And you are all going to stand for it. You are going to vote for it. You probably will have a teller vote on it. But I just want to see how foolish we can get, and I just wonder how anybody is going to oppose this amendment. I know the Attorney General wrote this bill. Everybody knows the Attorney General wrote this bill. Everybody knows that you cannot get any amendment on this bill until you call up the Attorney General and ask him if it is agreeable to him. Everybody knows that this House of Representatives has abdicated its legislative authority to the Republican Attorney General and the Democrats are helping him. Now, how foolish can we get about this thing?

I want to say to you, in all sincerity, that nobody on his own, no matter how many of them there are who have been discriminated against, under this act can get any relief except at the whim or the desire of the Attorney General of the United States. He has not only taken over the functions of the Congress to write legislation, but he has taken over the functions of the court to give relief under this bill. Now let somebody defend that.

Mr. McCULLOCH. Mr. Chairman, I ask unanimous consent that the amendment be again reported.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read as follows:

On page 2, line 2, strike out the words "upon the request of the Attorney General."

Mr. McCULLOCH. Mr. Chairman, I would be pleased if the gentleman from Virginia would answer a question with respect to the amendment. I wonder if the gentleman from Virginia would like to identify his amendment as beginning on line 1 and would be made to include the word "and" on page 2. I am of the opinion that the gentleman's amendment does not do exactly what he intends it to do, as I understood it read by the Clerk. I think the amendment, Mr. Chairman, offered by the gentleman from Virginia, should begin on line 1 after the word "shall" and should read "strike out the words 'upon the request of the Attorney General, and' " in lines 1 and 2. And, if the gentleman from Virginia agrees, I would ask that it be corrected accordingly.

Mr. SMITH of Virginia. That is what the amendment does. The amendment eliminates the words on line 1 after the word "shall." It eliminates the words "upon the request of the Attorney General and."

Mr. McCULLOCH. As I understand, the reading of the amendment by the Clerk did not do that. In any event, Mr. Chairman, I rise in opposition to this amendment.

The gentleman from Virginia [Mr. SMITH] has said that there is no relief under this bill for individual applicants, or they cannot bring an action under this bill. Of course, they cannot. The bill was not intended for that purpose. Individuals have the right now, under existing law, to protect their voting rights. This voting referee bill is to bring to mass groups of voters, without innumerable individual actions in the Federal court, the right to vote if qualified under State law.

That objection, I think, is not sound in view of that fact.

I suggest to the members of the Committee that the amendment be rejected.

Mr. SMITH of Virginia. Mr. Chairman, will the gentleman yield?

Mr. McCULLOCH. I am glad to yield.

Mr. SMITH of Virginia. The gentleman does not question the accuracy of my statement, that nobody, no number of persons can get relief until the application is made, not by them, but by the Attorney General.

Mr. McCULLOCH. I agree with that statement. That was not the purpose of the bill. If individuals seek relief from discrimination against them by reason of race or color, in exercising voting rights they have had the right to go into court and they will still retain the right to go into court as individuals, after this bill is enacted.

Mr. CELLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I subscribe fully to what the gentleman from Ohio has stated in opposition to the amendment. It would be like going up the hill and going down again. It would bring us right back to where we were in 1957 where the Attorney General on behalf of an individual brings the action. It would destroy the very purpose and efficacy of the bill and I therefore hope that the amendment will be voted down.

Mr. KITCHIN. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield.

Mr. KITCHIN. I should like to ask the chairman of the committee if, under this present procedure, this finding by the court which shall be approved by the Attorney General is made after the court has a proceeding before it, after it has found other facts upon the suit being brought under the original 1957 act, if this particular language does not take away the prerogative of the trial court which has heard all of the proceeding and is the one to find such a pattern or practice, if the Attorney General so instructs him. In other words, the purpose is to take away from the Federal court, not the State court, the prerogative of the trial judge making a determination on his own without the advice of the Attorney General.

Mr. CELLER. I must respectfully differ with the gentleman. I do not think it does that.

Mr. KITCHIN. Will the gentleman explain, please, why it does not?

Mr. CELLER. It says in any proceeding instituted pursuant to subsection (c). What does subsection (c) refer to? It goes back to the 1957 act; and I recommend that the gentleman read subsection (c). I think it should satisfy him.

Mr. KITCHIN. If the gentleman will yield further, at that particular point, when that action is brought under subsection (c), it is before a Federal court, not a State court.

Mr. CELLER. That is correct.

Mr. KITCHIN. When that action is pending there, then the language in this bill says that regardless of what the Federal judge may think, he has to await the decision of the Attorney General before he can go further in the same proceeding and find that there was a pattern or practice existing back yonder—when, we do not know.

Mr. CELLER. The Attorney General petitions the court and what is in the bill follows. All the Attorney General does is to petition the court for a finding of a pattern or practice. I must submit again that the amendment would destroy the very purpose of the bill.

Mr. KITCHIN. Mr. Chairman, if the gentleman will yield further, let me ask him this question. What would happen under this particular procedure, under the language of the bill before us, if the Attorney General refused or declined to instruct the court that he shall find a pattern or practice existing?

Mr. CELLER. It would depend on the nature and language of the order of the court.

Mr. KITCHIN. No, sir; not under the language of this bill, and the gentleman from Ohio [Mr. McCULLOCH] has admitted that, has conceded the fact that they could not go forward with this proceeding pending in the Federal court, without an instruction on the part of the Attorney General that the court shall find that a pattern or practice existed.

Mr. HOLTZMAN. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman.

Mr. HOLTZMAN. There is a basic difference. If this amendment were to carry, individuals would be bringing lawsuits to establish patterns and practices. This is something that is in the public interest and it is right that the Attorney General should initiate this kind of proceeding.

Mr. KITCHIN. Not the private individual. I will ask the gentleman if under the original provision, under section (c), the Attorney General, not the private individual, can bring this lawsuit. Once they are in court, it must be brought by the Attorney General.

Mr. CELLER. Under (c) the Attorney General is the only one that can bring the action, in the public interest. That makes a big difference in this matter.

Mr. KITCHIN. He brings that action in the public interest for certain individuals?

Mr. CELLER. For the United States or in the name of the United States.

Mr. KITCHIN. They are in court at the blessing of the Attorney General in the original case. Then the court pursues the matter after the parties are in, but he cannot under the language of this bill utilize his own prerogatives as the trial judge in the proceeding that is before him at that time to go any further, because he must then await the decision of the Attorney General before he can find that pattern or practice exists, under the language of this bill.

Mr. CELLER. The action is brought for the United States, and the individual applicants are the beneficiaries of the action.

Mr. YATES. Mr. Chairman, I rise in opposition to this amendment. The gentleman from Virginia supports his amendment by throwing before this side of the House the bogey of a Republican Attorney General and the necessity for obtaining his approval before any redress could be received. Any alternative, even the discretion of "a Republican Attorney General", to use the gentleman's phrase, is better to one unfairly denied his right to vote, than a situation in which he cannot vote under any circumstances, which would be the case if this bill were defeated or if the gentleman's amendment were to prevail. The gentleman is opposed to this purpose of this bill. His amendment is consistent with his efforts to defeat that purpose. It should be defeated.

Let those of us who want to help Americans now disenfranchised for no other reason than their race beware of the warnings advanced by its opponents. They have advanced solemn legal opinions that this bill is unconstitutional and have clothed themselves in deep mourning over what they have called the dismemberment of constitutional government. Mr. Chairman, deception walks in splendid raiment. The late Senator Huey Long was once asked whether fascism would ever come to the United States. He replied that if it did, it would be called antifascism. And so it is with the opponents of this legislation who attempt to wrap themselves in the mantle of constitutional dignity and authority to condone and to perpetuate anticonstitutional activities.

The legal technicalities which have been invoked cannot hide the constitutional truths that must be remembered, namely, that every citizen of the United States, regardless of race or color, is entitled to vote. This is the one essential qualification for voting—American citizenship. Of course, certain formal requirements like residence or understanding of the voting process may be required, but such requirements must be reasonable and they must be uniform among all races in their application. There must not be a double standard under which certain tests are required for members of one race and not for another. The fact is, however, that the double standard has been, and is being, employed today through many States to deprive Negro citizens of their voting birthright.

That fact has not been denied. That fact cannot be denied. And that fact has been ignored in the arguments presented by opponents of this legislation, with rare exceptions.

The manner in which opponents of this legislation mold the Constitution to fit their own particular purposes reminds me of the story of the three blind men who encountered an elephant for the first time. One, who felt the elephant's trunk, thought it was a snake. The second, who felt its tail, said it was a rope. The third, who felt the elephants leg, declared that it was a tree. Such conclusions are to be considered reasonable from blind men with no vision and little experience, but there is no reason why the learned and distinguished opponents of this legislation should limit their vision. The courts determine the manner in which the Constitution is to be interpreted, and their conclusion on the right to vote is unanimous. For example, in the case of *Rice* v. *Elmore* (165 F. 2d

387), on page 390, the court quoted from the case of *Smith* v. *Albright* (321 U.S. 649), where the Court said:

The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any State because of race. This grant to the people of the opportunity for choice is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied (*Lane* v. *Wilson* (307 U.S. 268, 275 59 S. Ct. 872, 876, 83 L. Ed. 1281)).

The Court continued further on page 392 and declared:

An essential feature of our form of government is the right of the citizen to participate in the governmental process. The political philosophy of the Declaration of Independence is that governments derive their just powers from the consent of the governed; and the right to a voice in the selection of officers of government on the part of all citizens is important, not only as a means of insuring that government shall have the strength of popular support, but also as a means of securing to the individual citizen proper consideration of his rights by those in power. The disfranchised can never speak with the same force as those who are able to vote. The 14th and 15th amendments were written into the Constitution to insure to the Negro, who had recently been liberated from slavery, the equal protection of the laws and the right to full participation in the process of government. These amendments have had the effect of creating a Federal basis of citizenship and of protecting the rights of individuals and minorities from many abuses of governmental power which were not contemplated at the time. Their primary purpose must not be lost sight of, however; and no election machinery can be upheld if its purpose of effect is to deny to the Negro, on account of his race or color, any effective voice in the government of his country or the State or community wherein he lives.

I suggest, therefore, that the Constitution is entirely on the side of permitting Negro Americans, together with all other American citizens, to vote, and that the specious arguments which have been raised by the bill's opponents to granting that right are without foundation.

The important thing is to make sure that all Americans are assured the right to vote. Let us keep our eyes on that goal and not be deterred from it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia [Mr. SMITH]

The question was taken; and on a division (demanded by Mr. SMITH of Virginia) there were—ayes 61, noes 132.

So the amendment was rejected.

Mr. CELLER. Mr. Chairman, I ask unanimous consent that all debate on the Celler substitute and all amendments thereto close in 15 minutes.

Mr. BOW and Mr. MEADER objected.

Mr. CELLER. Mr. Chairman, I move that all debate on the Celler substitute and all amendments thereto close in 15 minutes.

The motion was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia [Mr. POFF].

Mr. POFF. Mr. Chairman, I take this time in an effort to establish legislative intent. I should like to have the attention of the chairman of the committee, the gentleman from New York [Mr. CELLER], and the ranking minority member, the gentleman from Ohio [Mr. MCCULLOCH], to each of whom I should like to address one question.

By way of preface, let us assume that the Attorney General has brought a case under subsection (c) of section 1971; that in the course of that suit the Attorney General has requested the court to reach a determination as to whether or not the deprivation was pursuant to a pattern or practice; and that the court pursuant to that request took evidence on the issue, at the conclusion of which the court issued an order stating that there was a pattern or practice of discrimination on account of race.

My question is, Is that decree of the court a final decree which would permit an appeal in the regular order?

I will first ask the distinguished gentleman from New York to answer that question.

Mr. CELLER. I do not know what all the factors are that would be developed in the proceedings. I cannot answer that question categorically or even definitely. If the principal pattern or practice is established, and I take it it might endure for a year—it would endure for a year unless later on circumstances changed and the court might have to pass on it again, nobody can anticipate exactly what the court would rule on a matter of this sort or how it is necessary for the court to rule.

Mr. POFF. I am afraid possibly the gentleman may have misunderstood my question. I am simply asking, if the court has issued a decree finding that a pattern or practice existed, does that decree at that point constitute a final order to which an appeal would lie.

Mr. CELLER. I do not know whether it would be a final order upon which an appeal could be based. Again, it would have to depend on all the circumstances of that particular case and the particular application before the judge. It might, and it might not be, a finding or final decree upon which a decree could be predicated. It all depends on the circumstances.

Mr. POFF. Might I direct the same question to the gentleman from Ohio [Mr. MCCULLOCH].

Mr. MCCULLOCH. It is my opinion, if there be a finding of a pattern or practice which is followed by an order or decree with the court implementing that finding, that that is such a final order, or decree, that would be reviewable upon appeal or otherwise.

Mr. POFF. I thank the gentleman. I wonder if the gentleman from New York [Mr. LINDSAY] would care to respond to that question. I ask the gentleman if the court has, pursuant to the request of the Attorney General, issued a decree finding that the deprivation of the right grew out of a pattern or practice, would that decree at that point be a final order to which an appeal would lie?

Mr. LINDSAY. I would answer the gentleman's question this way. If in a proceeding brought under the 1957 Civil Rights Act the court should, under this amendment to the 1957 act, go on and make a finding that such deprivations were pursuant to a pattern or practice, such a finding would be part of the same proceeding and therefore would be appealable. Others may disagree with me on this, but this is the way I read it.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MEADER. Mr. Chairman, I offer an amendment, which is at the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. MEADER to the amendment offered by Mr. CELLER as a substitute for the amendment offered by Mr. MCCULLOCH: On page 1 of the Celler substitute strike out "(a) Add the following as subsection (e)" and all that follows down through the last page of the McCulloch substitute, and insert in lieu thereof the following:

"(a) Add the following as subsection (e) and designate the present subsection (e) subsection '(f)':

"'(e) (1) In any proceeding instituted pursuant to subsection (c) of this section to relieve any deprivation of a right or privilege secured by subsection (a) of this section, final orders of the court providing affirmative relief may specify that named individuals are qualified to vote and may also specify that such individuals, upon proof of such order in such manner as the court may direct, shall be permitted to vote in the same manner as if duly registered and qualified therefor under State law.

"'(2) In any proceeding instituted pursuant to subsection (c) of this section to relieve any deprivation of a right or privilege secured by subsection (a) of this section, the court may, pursuant to rule 53 of the Federal Rules of Civil Procedure, appoint special masters to assist the court in carrying out its responsibilities in such proceeding. The compensation to be allowed any such special master shall be fixed by the court and paid by the United States.'

"(b) In subsection (c), insert 'or affirmative' after 'preventive', and add at the end thereof the following: 'Proceedings brought under this subsection to relieve any deprivation of a right or privilege secured by subsection (a) of this section shall supersede any proceedings covering the same subject matter brought before any State court, tribunal, agency, or official to the extent of any inconsistency. In proceedings brought under this subsection, court orders requiring or prohibiting action by officials of a State or subdivision thereof shall also require or prohibit such action by their successors in office.'"

Mr. CELLER. Mr. Chairman, a point of order.

The CHAIRMAN. The gentleman will state it.

Mr. CELLER. The amendment offered by the gentleman from Michigan is a substitute to the Celler amendment. So we have a substitute to a substitute to the McCulloch amendment. Therefore, I make the point of order that the amendment is not in order because it is a substitute.

The CHAIRMAN (Mr. WALTER). The Chair is ready to rule. The amendment offered by the gentleman from Michigan strikes only a part of the substitute offered by the gentleman from New York as a substitute to the amendment offered by the gentleman from Ohio [Mr. MCCULLOCH]. This is clearly in order.

The Chair overrules the point of order.

Mr. MEADER. Mr. Chairman, this proposal is an alternate to the voting referee proposal which we have been discussing, and in my judgment my proposal is a clearly constitutional one.

In my opinion, the voting referee proposal on the other hand, is clearly unconstitutional.

I took an oath when I became a Member of this body to uphold and defend the Constitution. If I believe that the voting referee proposal is unconstitutional, as I do, I am compelled to vote against it.

In the discussion of the other amendment I offered this afternoon I pointed out that the voting referee procedure as set up would violate the fifth amendment to the Constitution by depriving individuals of due process of law and fair play. In addition, this voting referee proposal vests in the judiciary nonjudicial functions, in violation of article III of the Constitution. Further, this voting referee proposal authorizes a Federal official to seize the authority of a State which is vested in the State by the Federal Constitution. I think that, alone, is unconstitutional and for that reason I cannot support it.

Mr. CRAMER. Mr. Chairman, will the gentleman yield?

Mr. MEADER. I yield to the gentleman from Florida.

Mr. CRAMER. Is it not true as appears on page 62 of the hearings, that since February 1894, when the Congress of the United States in repealing the Reconstruction Act had this to say, in the Committee Report No. 18, 53d Congress, 1st session, page 7, "that every trace of restriction should be wiped from the statute books," this is the first time since the Reconstruction period that Congress has considered legislation that would substitute a referee to do an administrative job which a duly elected State official is authorized to do?

Mr. MEADER. The gentleman is correct. This is the first time in almost 100 years that a Federal official has been authorized to clothe himself with State authority, and it is a dangerous device which can destroy the independence of a State.

Mr. Chairman, during discussion of the Celler substitute there were numerous complaints that its provisions and the discussion have been confusing.

It is not surprising there has been confusion since the proposal deals with a most technical and difficult field of legislation, namely, the rules of Federal civil procedure. The Celler proposal is purely and simply a matter of civil judicial procedure and a change in rules with respect to one class of civil cases only, namely, suits brought by the Attorney General under the Civil Rights Act of 1957, to enforce the provisions of the 15th amendment against discrimination in voting.

Mr. Chairman, this is peculiarly the type of legislation which ought to receive the most careful and complete consideration of the Judiciary Committee, its members, all of whom are able lawyers, its staff lawyers and witnesses who are lawyers, both inside and outside the Federal Government. In view of the fact that the Celler proposal did not receive such consideration, it surprises me that there is not more confusion as we attempt to write this difficult, technical and complicated provision relating to civil judicial procedure on the floor of the House.

Many lawyers are concerned with the constitutionality of the proposed voting referee method of enforcing voting rights. This may proceed partly from a natural skepticism of innovations in procedural rules which have been developed carefully and after extensive litigation as well as congressional enactment throughout the history of our Republic. Any careful lawyer must be inclined to be skeptical of rash and revolutionary changes in delicately balanced rules which have been developed to enable the Federal Government to carry out its policies on the one hand but to protect the rights of individuals and legitimate constitutional powers of the States on the other.

Mr. Chairman, the constitutional questions involved in the Celler proposal are primarily in three areas:

First, maintenance of the judicial character of courts by refraining from assigning them nonjudicial responsibilities, in violation of article III of the Constitution;

Second, preservation of the constitutional rights of the individual, particularly that no person shall "be deprived of life, liberty or property without due process of law," as guaranteed by the fifth amendment of the Constitution; and

Third, the legitimate powers of State to manage the affairs left to them by virtue of the 10th amendment in which powers are reserved to the States, the provisions of article I, section 2, the 17th amendment and the provisions of article IV, section 4, under which qualifications to vote and the election machinery for State and local offices, as one of the basic ingredients of a republican form of government, are vested in the States.

Mr. Chairman, it might be well to review briefly the origin of the so-called voting referee proposal.

When the Attorney General appeared before the House Judiciary Committee March 11, 1959, on the civil rights bill, no mention was made of anything resembling the voting referee proposal and in fact, the Attorney General testified that he doubted at that time that further authority in the Department of Justice to start litigation would contribute to the progress of civil rights. I include at this point excerpts of the testimony of the Attorney General.

Attorney General ROGERS. Let me say this: I think as of now there is doubt, at least there is doubt in my mind, as to the wisdom of giving the Federal Government authority to start more litigation.

I appreciate that you can make an argument for it and I think I am as anxious to make progress in this field as anybody, and I think that when people talk about just educating and understanding, and put all their emphasis on that, it is a mistake, because I do not think you can do it that way alone.

Likewise, I think if you put all your emphasis on law enforcement, you make a mistake, because this field is a good deal different from the average law enforcement problem. It does involve both law enforcement and an understanding of the problems and what it means to our Nation.

So it seems to me that we have to be pretty mature in our judgments about whether legislation which seems to favor civil rights would actually have that result, and I seriously have doubt about whether legislation requiring the Federal Government to institute more civil actions would have the result of making greater progress in this field.

Now, the Congress has authorized the Civil Rights Commission to make a study of the need for further legislation. I certainly do not think we should say that the Federal Government does not permanently need more authority. I think we should hold that open to see how developments occur; I think we should particularly give the Civil Rights Commission the opportunity to make a more complete study in this field and to make recommendations about further power on the part of the Federal Government in this field.

I think, Mr. HOLTZMAN, it is very difficult when you are sitting here in Washington to get a feel for the whole problem, and I think the Civil Rights Commission holding hearings, as they have, in the South and in getting testimony from a lot of people will be in a much better position to make mature, thoughtful recommendations about the extension of Federal authority to institute litigation than we could now.

I certainly, while I have doubt about it, I am inclined to think it is better to wait, particularly in view of the encouraging developments in Virginia, where there was no Federal intervention of any kind.

So I just want to complete this long answer by saying I am just as thoroughly convinced of the need of progress in this field as anybody.

I have some doubt about whether additional authority for the Federal Government to start litigation would result in substantial progress at the moment.

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Attorney General ROGERS. Well, it could be.

I want to say that certainly this is not a one-sided problem at all.

I mean, I think you can make good arguments both ways, and I think that from where I sit, I am not sure that the authority to start more lawsuits, authority for the Federal Government to start more lawsuits, would be particularly helpful at this time.

I readily admit you could make arguments the other way.

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Mr. ROGERS. Along that line, and since it deals with section 3 of your proposal, to what extent and how far you feel that the Federal Government can go in connection with voting records of a State?

Attorney General ROGERS. I think we can go just as far as we have asked to go in this legislation.

Mr. ROGERS. And no further?

Attorney General ROGERS. Not at the moment.

Mr. MILLER. In that connection, may I ask is the general impression which you are trying to convey here—and I think very well—that it is your position, and the position of the administration, that you are as anxious as any person to accomplish the most in the shortest period of time that you can do in the field of civil rights?

Attorney General ROGERS. That is correct.

Mr. MILLER. But it is your profound conviction, based upon your experience in the Attorney General's Office, that too much Federal legislation at this time, in the absence of a volume of complaints in other areas might create more resistance than would proceeding a little more slowly, as indicated by the administration?

Attorney General ROGERS. I agree with everything you say, with just one slight variation.

I do not think I have a profound conviction on it. I think a better way to put it is that I have doubt at the moment that further legislation permitting us to start lawsuits might do more harm than good at the moment.

I do not think we should close our minds to that possibility, if there are developments which indicate it would be helpful.

Mr. MILLER. In other words, if you received in the course of the next year numerous complaints of discriminations and violations of the basic statutes in the civil rights areas, in the fields of housing or the fields of employment, or any other fields, then you would be the first to come here and ask for additional legislation to remedy the situation.

But, as of the moment, you feel that the securing and the protection of the right to vote mainly can secure for any minority great progress in the acquisition of their total civil rights, and that as we go slowly forward you can accomplish more for those minorities than attempting to get too much government and too much power in the hands of the Federal Government at this time?

Attorney General ROGERS. Well, I do not like to rephrase the question.

I am not in favor of proceeding slowly. I am in favor of proceeding as fast as we can, but do it in an intelligent way and, I think, there is a tendency to say, "Well, here is a bill, and this is a strong civil rights bill, and if you are for the bill, you are for civil rights, and if you are against it, you are against civil rights."

I think that oversimplification just could be very misleading in this field.

Sometimes progress can be made a lot faster without litigation, and I have tried to say that I think that you have to gear your law enforcement pretty thoughtfully in with the development of public opinion, because if you have everybody in the State against you there is not much you can do in law enforcement that is not pretty disastrous.

Now, if you, as in Virginia, have the situation developing in such a way that responsible people realize what the alternatives are, and very simply the alternatives are you either have a public school system or you do not have a public school system, and they realize the problems that would be inherent in elimination of a public school system, and they come to that conclusion based on lawsuits that are started by their own people and, to some extent in their own courts, and they get involved in the thoughtful process rather than in the emotional process, then I think you are apt to have more progress.

Now, the minute you get the Federal Government coming down telling them how to do it, and you start lawsuits and you are litigating in court, and all the local people say, "Well, here are the Federal people down here again, and we are going to do so and so," that makes it much more difficult; you get a real strong emotional response from everybody, and it is apt to set the whole process back.

What I am saying is that in view of the fact we do have doubt now, and in view of the fact we have the Civil Rights Commission, I do not think at this time that we want to propose any additional authority.

Mr. ROGERS. I want to see if I heard you correctly.

Did I understand you to say that unless you have the sentiment of the people in the area back of the law that you are trying to enforce that it is useless to try to enforce it?

Attorney General ROGERS. No; I did not say that. I said if you have everybody in the State against it, it makes it a very difficult problem.

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Attorney General ROGERS. I will tell you this, the Federal Government insistently and particularly the FBI has resisted, and I think very wisely over the years, the extension of Federal power.

There is always a tendency to give the Federal Government more authority, particularly because of the outstanding success of the FBI over the years, and the confidence that the people have in the FBI.

People forget, I think, the size of the FBI.

Actually, there are only about 6,000 special agents, which is about one-fourth of the size of the New York City police force, and about half the size of the Chicago police force, and the FBI does cooperate very closely with State and local authorities.

They have cooperated with the police academies, where they instruct them, and so forth. We have serious reservations about extending this jurisdiction so that you could have the concept of a national police force.

So, consequently, we would like to limit it to what we think is a proven need, and there is one here, and we would like to correct it, but we do not want to go beyond that.

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Mr. RODINO. Are there any other questions, Mr. MEADER?

Mr. MEADER. I would only like to say that I commend the Attorney General for the statement he has made to the committee this morning and the manner in which he has replied to the questions put.

What has pleased me most is his statement that the policy of the administration and the Department of Justice is not to seek to extend Federal power unnecessarily.

It is significant to note that in reply to Representative ROGERS the Attorney General asserted no additional legislation on voting rights was needed now beyond the provision relating to retention of election records, which is title III of H.R. 8601. That passage is worth repeating:

Mr. ROGERS. Along that line, and since it deals with section 3 of your proposal, to what extent and how far you feel that the Federal Government can go in connection with voting and voting records of a State?

Attorney General ROGERS. I think we can go just as far as we have asked to go in this legislation.

Mr. ROGERS. And no further?

Attorney General ROGERS. Not at the moment.

Aside from the report of the Civil Rights Commission nothing in the field of voting rights has happened, except the handing down of two Supreme Court decisions upholding the constitutionality of the Civil Rights Act of 1957.

Apparently, the birth of the voting referee idea was stimulated by the report of the Civil Rights Commission September 9, 1959. It recommended that the President be authorized to appoint Federal registrars for the purpose of registering Negroes in localities where the Civil Rights Commission or some other agency might find that Negroes were being denied registration.

Apparently, the Justice Department did not react favorably to this recommendation but was stimulated by it to develop and suggest an alternative. Our information is somewhat sketchy on this point but that conclusion is confirmed by the testimony of Deputy Attorney General Walsh before the House Judiciary Committee on February 9, 1960, on pages 30 and 31 as follows:

Mr. WILLIS. I understand, and I am not questioning your devotion to protecting the right to vote. And may I say parenthetically, you can go in my district. They vote, and have been voting, so I am not involved in this thing. But we are talking about a proposal.

This is one approach. The Civil Rights Commission suggested another approach, that you are critical of. As a matter of fact, your chief, the Attorney General, has ridiculed it by saying that their proposal was like buying a ticket to the Dempsey-Firpo contest many years ago. You are not only critical of it, but you ridiculed what the Commission does.

Mr. WALSH. I don't think it was ridiculed.

Mr. WILLIS. Now you come with this proposal. What I am wondering is, could you not perhaps find a better way to achieve what you are after, rather than asking Congress to establish presumptions in the fashion that you suggest?

In other words, have you people thought this thing out long enough? How long have you been working on this bill?

Mr. WALSH. I will tell you how long we have been working on it. It goes back probably to before the time I came to the Department. But since the civil rights report in 1959 we have given it a lot of thought, and we respect the Commission for its report and for its suggestion, which has opened up all this line of legislative possibility.

We started off with the Commission's report, which required appointment by the President. We thought it seemed wrong to draw the President into this. Here is a man who is trying to guard the national security, and he has to start worrying about county registrars? So we tried to find a better way. We thought, who is the officer most likely to be respected in the locality in which this problem exists? And we thought of the Federal judge. Then we said, "All right, have the Federal judge appoint the registrar." Then we said, "Well, that will be supplanting a State officer with a Federal officer. Why do that? We will have the Federal judge appoint a special master, or call him a referee, who wouldn't act unless the State registrar has had a chance to act and has refused to act." That is the next step we took.

Then, we said, "How will this proceeding go before the referee? What will the applicant have to do, and how can we make his right to vote effective?"

Well now, the registrar proposal does not deal with the right to vote. That talks about registration as though that were something of value in itself. So we developed the parts of this bill which authorize the Federal judge to send persons to the polling place and the place where the votes are counted, to see that any rights which he would have would be respected.

Then it came to the question, How does this applicant prove his right to vote? Does he have to prove all over again this pattern of discrimination which it took the U.S. attorney probably weeks of preparation to prove? Or will that make his right to vote effective?

Here the white people are. They are going into the State registrar's office. All they do is fill out a form and answer a few questions, and they vote. Are we doing anything for this Negro if we say, "You go before a voting referee, and you prove your case from beginning to end. You prove a pattern of discrimination. You prove that you personally are a victim of that pattern of discrimination." Is that going to get him a chance to vote? We don't make the white people do that. Why do we make the Negroes do it?

So we began to think: What can Congress do to be fair about this, to minimize the amount of intrusion into the State administration and yet make effective the 15th amendment in these sections?

And this was the very best we could do. We would require the Negro to prove every

step of his qualification to vote: his age, his residence; if the literacy is required, to prove his literacy; if he was to understand the Constitution, let him answer the question as to the Constitution, if it is a valid State provision. And if he has to have somebody identify him—some States, like Louisiana, require that two registered voters identify the new applicant—let him be identified by two registered voters. But here let me point out the referee will have the subpena power to help this man get his two witnesses if he needs them.

We thought that all over, and we came to this one hurdle: Should he be required to prove in each individual case he personally was discriminated against? And we concluded that burden of proof was too difficult under all these circumstances; and indeed the answer to that link and proof was so obvious from the previous pattern of discrimination that we could ask Congress to enact this conclusive presumption at the benefit of the applicant.

Mr. WILLIS. Judge, I appreciate your concern and your sincerity.

Mr. Chairman, there are several novel features of the voting referee proposal which give rise to the constitutional problems to which I referred earlier:

First. The first is that the court, upon the request of the Attorney General, is authorized to make a finding whether deprivation of voting rights on account of race or color "was or is pursuant to a pattern or practice."

Second. If the court finds such pattern or practice, then a variety of novel rights, remedies, and procedures come into being, (a) for a year and thereafter until the court finds that such pattern or practice has ceased, any person of such race or color may apply for an order declaring him qualified to vote and such order would be effective as to any election held within the period for which straight registration would have been effective; (b) an applicant is entitled to such an order upon proof, first, that he is qualified under State law to vote; and two, he has been denied the opportunity to register or found not qualified by a State registrar; (c) the court may appoint voting referees to, first, receive applications for voting orders; two, to take evidence ex parte and to report to the court whether the applicant is entitled to a voting order. The sufficiency of evidence before the referee is also prescribed; three, voting referees are given the powers of a master under rule 53C, the Federal Rules of Civil Procedure.

Mr. Chairman, the voting referee bill is unconstitutional.

The authority of Congress to pass any legislation in this field is derived from the 15th amendment, empowering Congress to pass laws to prevent the United States or any State from depriving a citizen of the right to vote because of his color.

If the 15th amendment did not exist we would not even be discussing this proposal. No power was given to Congress originally to regulate elections generally. Limited revisionary authority was given to Congress over the "time, places, and manner of holding elections for Senators and Representatives," and the "time of choosing the electors" for President and Vice President, "which day shall be the same throughout the United States."

But during the existence of our Republic, the election machinery and the laws which have regulated it have been in the exclusive realm of authority of the States. We have no Federal registration laws, no Federal registrars or clerks, no laws regarding the nomination of candidates for office or contesting elections, except that the House and the Senate are the judges "of the elections, returns, and qualifications" of their own Members. We do, of course, have the Hatch Act and Corrupt Practices Act prohibiting certain practices and activities of Federal officials and employees. The great body of the law of elections, even for Federal offices, is still, and has been for 170 years, in power of the States.

Both the 15th and the 19th amendments, the first related to color, the second to sex, are merely limitations to the basic State power over elections.

Since those amendments are only limitations, they may not be the means for nullifying other basic constitutional grants of power or destroying personal rights guaranteed by the Constitution, nor are they a new grant of power to Congress in derogation of other constitutional provisions.

The 15th and 19th amendments may not be employed to alter our basic constitutional system of dual sovereignty; nor may they be employed to destroy the Bill of Rights.

The "appropriate legislation" the Congress is authorized to adopt must not transgress the limits of personal and State guarantees of rights and powers any farther than the minimum necessary to accomplish the objective of nondiscrimination in voting because of color or sex.

The adoption of the 15th and 19th amendments did not dissolve our Federal system, did not authorize Congress to ignore the Constitution, or by statute, amend it. Those amendments merely authorized Congress to legislate in an area where, theretofore, the Congress had been wholly devoid of power. Those amendments contemplated that Congress would employ that power within limits, otherwise constitutional.

Mr. Chairman, the voting referee proposal bristles with constitutional problems.

Must we rashly throw away decades of precedent and statutes governing Federal judicial procedure? Let us rather build upon the past, intelligently and with caution. What we do to procedure in the voting rights field may next month, or next year or 10 years from now be applied to another field because we are dealing with the basic structure of our Federal legal system—and we are establishing precedents.

Let us not overhaul these technical and delicately balanced procedural rules in a rough and tumble, emotional political floor debate. Let us be more mature than that.

Let us grant power to the executive and the judiciary in addition to the power we gave them in the Civil Rights Act of 1957—but let them exercise that power under existing rules of due process and fair play and under the present status of equilibrium between the powers of the Federal Government and the States. Let us not by the precedent we establish here undermine both the personal rights of individuals and the sovereign powers of the States.

I. THE VOTING REFEREE PROPOSAL IS UNCONSTITUTIONAL BECAUSE IT PURPORTS TO VEST IN COURTS AND THEIR SUBORDINATE OFFICIALS NONJUDICIAL FUNCTIONS

First. Article III of the United States Constitution vests the judicial power in the Supreme Court and such inferior courts as Congress may create. Article I vests the legislative power in the Congress, and article II vests the Executive power in the President.

The courts have consistently held that an attempt on the part of Congress to vest executive or legislative authority in the courts or any other nonjudicial function is unconstitutional because the judicial power extends only to cases and controversies. Courts thus will not accept ministerial or administrative functions. In *Muskrat* v. *U.S.* (219 U.S. 346 (1911)) the Court refused to render advisory opinions where no case or controversy existed. Other cases in which the courts have refused to accept nonjudicial functions are as follows:

Trimble v. *Johnston* (173 F. Supp. 651, 653): "The nature of the judicial process and the function of the courts consist of deciding actual cases and controversies. The sole jurisdiction and duty of the courts is to pass on the individual legal rights that parties to litigation assert and seek to have vindicated."

Keller v. *Potomac Elec. Co.* (261 U.S. 428, 444 (1923)), Mr. Chief Justice Taft delivered the opinion of the Court: "Such legislative or administrative jurisdiction, it is well settled cannot be conferred on this Court either directly or by appeal. The latest and fullest authority upon this point is to be found in the opinion of Mr. Justice Day, speaking for the Court in *Muskrat* v. *United States* (219 U.S. 346). The principle there recognized and enforced on reason and authority is that the jurisdiction of this Court and of the inferior courts of the United States ordained and established by Congress under and by virtue of the third article of the Constitution is limited to cases and controversies in such form that the judicial power is capable of acting on them and does not extend to an issue of constitutional law framed by Congress for the purpose of invoking the advice of this Court without real parties or a real case, or to administrative or legislative issues or controversies." (*Hayburn's* Case (2 Dall. 410, note); *United States* v. *Ferreira* (13 How. 40, 52); *Ex parte Siebold* (100 U.S. 371, 398); *Gordon* v. *United States* (117 U.S. 697); *Baltimore & Ohio R.R. Co.* v. *Interstate Commerce Commission* (215 U.S. 216).)

U.S. v. *Ferreira* (13 Howard 39, 50 (1851)), Mr. Chief Justice Taney delivered the opinion of the Court: "A question might arise whether commissioners appointed to adjust these claims, are not officers of the United States within the meaning of the Constitution. The duties to be performed are entirely alien to the legitimate functions of a judge or court of justice, and have no analogy to the general or special powers ordinarily and legally conferred on judges or courts to secure the due administration of the laws. And, if they are to be regarded as officers, holding offices under the Government, the power of appointment is in the President, by and with the advice and consent of the Senate; and Congress could not by law, designate the persons to fill these offices. And if this be

the construction of the Constitution, then as the judge designated could not act in a judicial character as a court, nor as a commissioner, because he was not appointed by the President, everything that has been done under the acts of 1823, and 1834, and 1849, would be void, and the payments heretofore made might be recovered back by the United States. But this question has not been made; nor does it arise in the case. It could arise only in a suit by the United States to recover back the money. And as the case does not present it, and the parties interested are not before the court, and these laws have for so many years been acted on as valid and constitutional we do not think it proper to express an opinion upon it. In the case at bar, the power of the judge to decide in the first instances, is assumed on both sides, and the controversy has turned upon the power of the Secretary to revise it; and it is in this aspect of the case, that it has been considered by the court, in the foregoing opinion.

"The appeal must be dismissed for want of jurisdiction."

Note by the Chief Justice, inserted by order of the Court:

"The result of the opinions expressed by the Judges of the Supreme Court of that day in the note to Hayburn's case, and in the case of the *United States* v. *Todd*, is this:

"1. That the power proposed to be conferred on the circuit courts of the United States by the act of 1792 was not judicial power within the meaning of the Constitution, and was, therefore, unconstitutional, and could not lawfully be exercised by the courts.

"2. That as the act of Congress intended to confer the power on the courts as a judicial function, it could not be construed as an authority to the judges composing the court to exercise the power out of court in the character of commissioners.

"3. That money paid under a certificate from persons not authorized by law to give it, might be recovered back by the United States."

Radio Comm. v. *General Electric Co.* (281 U.S. Repts. 464, 469), opinion of the Court: "But this Court cannot be invested with jurisdiction of that character, whether for purposes of review or otherwise. It was brought into being by the judiciary article of the Constitution, is invested with judicial power only and can have no jurisdiction other than of cases and controversies falling within the classes enumerated in that article. It cannot give decisions which are merely advisory; nor can it exercise or participate in the exercise of functions which are essentially legislative or administrative. *Keller* v. *Potomac Electric Power Co.*, supra (p. 444), and cases cited: *Postum Cereal Co.* v. *California Fig Nut Company*, supra (pp. 700–701); *Liberty Warehouse Co.* v. *Grannis* (273 U.S. 70, 74); *Willing* v. *Chicago Auditorium Association* (277 U.S. 274, 289); *Ex Parte Bakelite Corporation* (279 U.S. 438, 449)."

Postum Cereal Co. v. *Calif. Fig Nut Co.* (272 U.S. Reports 693, 700), opinion of the Court: "The distinction between the jurisdiction of this Court, which is confined to the hearing and decision of cases in the constitutional sense, and that of administrative action and decision, power for which may be conferred upon courts of the district, is shown in the case of *Keller* v. *Potomac Electric Company* (261 U.S. 428, 440, 442, 443). There it is pointed out that, while Congress in its constitutional exercise of exclusive legislation over the district may clothe the courts of the district not only with the jurisdiction and powers of the Federal courts in the several States but also with such authority as a State might confer on her courts (*Prentis* v. *Atlantic Coast Line Company* (211 U.S. 210, 225, 226)) and so may vest courts of the district with administrative or legislative functions which are not properly judicial, it may not do so with this Court or any Federal court established under article III of the Constitution."

Second. It is clear that the registration of electors and the conduct of elections are ministerial and administrative, not judicial, functions.

The establishment of election precincts and voting places and the appointment of election commissioners by county officers were held to be merely administrative or ministerial acts, requiring no judicial or quasi-judicial inquiry or determination, and hence prohibition was held not to lie to prevent such action. (*Williamson* v. *County Ct.* ((1904) 56 W. Va. 38, 48 S.E. 835, 3 Ann. Cas. 355).)

And the duties of a board of election commissioners in connection with the filing of lists of qualified voters of a political party and in appointing officers of a primary election were held to be merely administrative and not to involve any judicial functions, and hence prohibition was held not to lie against the board. (*Kalbfell* v. *Wood* ((1906) 193 Mo. 675, 92 S.W. 230).)

According to what would seem to be the better view, the mere calling of an election is not such a judicial act as may be controlled by the writ of prohibition, in the absence of statute.

Thus, a board of election commissioners not being a judicial body, it was held that prohibition would not lie to prevent it from ordering an election. (*People ex rel. Taylor* v. *Election Comrs.* ((1880) 54 Cal. 404).)

And the duties of a public officer in connection with the calling of a stock law election upon the filing of a petition therefor by a certain number of residents were held to be administrative or ministerial in character, and hence not subject to control by prohibition. (*State ex rel. Turner* v. *Bradley* ((1901) 134 Ala. 549, 33 So. 339).)

The act also of a county court in calling an election to determine the question of relocation of the county seat was held to be purely ministerial, so that prohibition would not lie to prevent it. (*Baker* v. *O'Brien* ((1916) 79 W. Va. 101, 90 S.E. 543).)

Where the duties of the superintendent of schools in calling an election and proceeding for the formation of a consolidated school district were purely ministerial, and did not involve the exercise of any discretion, it was held that prohibition would not lie to restrain the performance of such duties. (*State ex rel. Isaacson* v. *Parker* ((1918) 40 S.D. 102 166 N.W. 309).)

In *State ex rel. Caldwell* v. *Vaughn* ((1912) 33 Okla. 384, 125, p. 899) it was held that a county election board, in receiving applications of candidates to have their names placed on ballots, and in placing names thereon, was engaged in a purely ministerial or executive duty, not involving the exercise of any judicial power, and hence that prohibition would not lie to restrain such act.

It was recognized by the court in *Oren* v. *Secretary of State* ((1912) 171 Mich. 590, 137 N.W. 227) that the writ of prohibition was not the proper remedy to prevent a secretary of state from receiving and filing nominating petitions for a public office.

It is perfectly proper for a court to review in a case or controversy the legality or correctness of a decision or action by an administrative official, but it is not proper for the court to assume and exercise the discretion vested in an administrative official. The courts have uniformly refused to do so.

It is clear from the wording of the voting referee proposal, and from the testimony of the Justice Department spokesman, Judge Walsh, in construing the proposal that it is contemplated that the so-called voting referee, an appointee of the court exercising the power of the court, will stand in the shoes of the State registrar or clerk and exercise the authority vested in that State official by the constitution and laws of the State. It is also clear that this constitutes the exercise of administrative or ministerial authority and discretion by a court.

It is argued that such assumption of State authority is not unconstitutional since it is merely effectuation of the broad decree of the court prohibiting discrimination against Negroes, and is thus ancillary to the judicial function of the court in the proceeding brought by the Attorney General under the Civil Rights Act of 1957. If that were true, a case for constitutionality of this device might be made; but the registration of Negroes and the prevention of discrimination against them is not an ancillary matter; it is the very purpose of the proceeding brought to effectuate the provisions of the 15th amendment.

II. THE VOTING REFEREE PROPOSAL IS UNCONSTITUTIONAL BECAUSE IN VIOLATION OF THE FIFTH AMENDMENT OF THE CONSTITUTION IT DEPRIVES DEFENDANTS OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW

The proceeding against State officials is one which for its enforcement depends on the incarceration of the individual for contempt of court. Rules of fair play and due process require that before such punishment can be inflicted, a person must have his day in court and an opportunity to defend himself. The voting referee proposal denies a defendant his day in court and thus denies due process.

First. It excludes him from the initial factfinding process by the referee. It is mandatory that the defendant, whose liberty will be affected by the factual record made by the referee, be excluded from the referee's ex parte proceeding. He is thus deprived of challenging the accuracy or validity of the evidence presented by the applicant to prove himself qualified and denied the opportunity to present contrary evidence. Thus, by the ex parte proceeding we encourage the development of a slanted, one-sided record and expressly forbid tested methods of developing the truth, and it is on the basis of this one-sided record that the defendant is to be punished for contempt.

Second. The voting referee proposal also provides for limitation on the character of proof to establish the applicant's eligibility for a voting order by providing that his statement under oath

should be prima facie evidence as to his age, residence, and prior efforts to register and that his written or stenographically reported answer to questions shall be included in the referee's report as evidence of the literacy requirements of the State law.

Third. The effect of the voting referee provision is to exclude from the case or controversy the central fact of the offense, namely, the abridgment of the right to vote on account of color. Where a pattern or practice is found to exist in the proceeding, discrimination is conclusively presumed not only against the original defendant but all who may follow him, regardless of the truth. This would be equivalent to passing a general statute saying that in all Federal criminal cases, criminal intent need not be proved by the prosecutor.

The limited rights to except to the report of the referee and the provision that the court in its discretion may try issues of fact and law raised by the exceptions either before the court or by referring such issues back to the voting referee, do not cure, in my opinion, the denial of due process.

The secrecy of star chamber proceedings where a factual record is made upon which a defendant may be sent to jail is repugnant to the American spirit of fair play and is violative of existing concepts of due process in Federal civil judicial procedure. If this were not so, and defendants' rights under existing civil procedure are to be preserved, it would not be necessary to legislate and change the rules of the game.

DUE PROCESS

Morgan v. *U.S.* (304 U.S. 1, 18, 22 (1938)), Mr. Chief Justice Hughes delivered the opinion of the Court:

"But a 'full hearing'—a fair and open hearing—requires more than that. The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command (p. 18).

"Again, the evidence being in, the Secretary might receive the proposed findings of both parties, each being notified of the proposals of the other, hear argument thereon, and make his own findings. But what would not be essential to the adequacy of the hearing if the Secretary himself makes the findings is not a criterion for a case in which the Secretary accepts and makes as his own the findings which have been prepared by the active prosecutors for the Government, after an *ex parte* discussion with them and without according any reasonable opportunity to the respondents in the proceeding to know the claims thus presented and to contest them. That is more than an irregularity in practice; it is a vital defect.

"The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

Gonzales v. *U.S.* (348 U.S. 407, 413, 414, 416, 417 (1955)), Mr. Justice Clark delivered the opinion of the Court:

"Furthermore, if the registrant is to present his case effectively to the Appeal Board, he must be cognizant of all the facts before the Board as well as the overall position of the Department of Justice * * * (p. 413).

"The Department of Justice based its rejection of his claim on the proximity of petitioner's conversion to his registration for the draft, a contention of which he had no knowledge and no opportunity to meet. The petitioner was entitled to know the thrust of the Department's recommendation so he could muster his facts and arguments to meet its contentions. See *Morgan* v. *United States* (304 U.S. 1, 18) (p. 414).

"And, in a case where it was not shown that the registrant had access to the panel's report, Judge Learned Hand said:

" 'As the case comes to us, the board made use of evidence of which (the registrant) may have been unaware, and which he had no chance to answer: a prime requirement of any fair hearing.' (*United States* v. *Balogh* (157 F. 2d 939, 943, judgment vacated on other grounds, 329 U.S. 692)) (p. 416).

"We hold that the overall procedures set up in the statute and regulations, designed to be 'fair and just' in their operation, 62 Stat. 605, 50 U.S.C. App. sec. 451(c), require that the registrant receive a copy of the Justice Department's recommendation and be given a reasonable opportunity to file a reply thereto. Accordingly, the decision of the court of appeals, upholding petitioner's conviction for refusing to submit to induction, is reversed" (p. 417).

Greene v. *McElroy* (360 U.S. 474, 496–497 (1959)).

III. THE VOTING REFEREE PROPOSAL IS UNCONSTITUTIONAL BECAUSE IT INVOLVES SEIZURE BY AGENTS OF THE FEDERAL GOVERNMENT OF THE GOVERNMENTAL POWER OF THE STATES AND IN EFFECT APPOINTS A RECEIVER IN BANKRUPTCY TO TAKE POSSESSION OF THE MOST PRECIOUS THING THE PEOPLE OF A STATE ENJOY, NAMELY, THE POWER TO GOVERN THEMSELVES

The voting referee proposal violates the 10th amendment and article IV, section 4, of the Constitution of the United States, which guarantees to each State a republican form of government. The United States, which is charged with the protection and assurance of a republican form of self-government for every State would itself be the offender by seizing, through a voting referee, control of the people's most precious right, the right of franchise; and vesting that control in a subordinate judicial official not chosen by, nor responsible to, the people whose authority he exercises.

The voting referee proposal likewise expressly makes the State itself guilty of the illegal acts of its officers, and as a party defendant subjects a sovereign State to the sanctions of a lower Federal district court.

ARTICLE IV

SEC. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence (U.S. Constitution).

Corwin U.S. Constitution Anno. (1953) p. 704:

"It was established in the pioneer case of *Luther* v. *Borden* (7 How. 1 (1849)) that questions arising under this section are political, not judicial, in character, and that it 'rests with Congress to decide what government is the established one in a State * * * as well as its republican character' (ibid. 42). See also *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District* (281 U.S. 74, 80 (1930)); *Mountain Timber Co.* v. *Washington* (243 U.S. 219, 234 (1917)). Upon Congress also rested the duty to restore republican governments to the States which seceded from the Union at the time of the Civil War. In *Texas* v. *White* (7 Wall. 700, 729 (1869)) the Supreme Court declared that the action of the President in setting up provisional governments at the end of the war was justified, if at all, only as an exercise of his powers as Commander in Chief and that such governments were to be regarded merely as provisional regimes to perform the functions of government pending action by Congress. On the ground that the questions were not justiciable in character, the Supreme Court has refused to consider whether the adoption of the initiative and referendum (*Pacific States Teleph. & Teleg. Co.* v. *Oregon* (223 U.S. 118 (1912)); *Kiernan* v. *Portland* (223 U.S. 151 (1912)); *Ohio ex rel. Davis* v. *Hildebrandt* (241 U.S. 565 (1916) or the delegation of legislative power to other departments of government (*Ohio ex rel. Bryant* v. *Akron Metropolitan Park District* (281 U.S. 74, 80 (1930)); *O'Neill* v. *Leamer* (239 U.S. 244 (1915)); *Highland Farms Dairy Inc.* v. *Agnew* (300 U.S. 608, 612 (1937)); *Forsyth* v. *Hammond* (166 U.S. 506, 519 (1897)) is compatible with a republican form of government. This guarantee does not give the Supreme Court jurisdiction to review a decision of a State court sustaining a determination of an election contest for the office of Governor made by a State legislature under the authority of a State constitution (*Taylor* v. *Beckham* (178 U.S. 548 (1900)). See also *Marshall* v. *Dye* (231 U.S. 250 (1914)). Inasmuch as women were denied the right to vote in most, if not all, of the Original Thirteen States, it was held, prior to the adoption of amendment XIX, that a State government could be challenged under this clause by reason of the fact that it did not permit women to vote" (*Minor* v. *Happersett* (21 Wall. 162, 175 (1875)).

"No particular government is designated by this clause as republican. Neither is the exact form to be guaranteed, in any manner especially designated. The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments when the Constitution was adopted. In all the people participated to some extent, through their representatives elected in the manner especially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is therefore to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form within the meaning of that term as employed in the Constitution. (*Minor* v. *Happersett* (Mo. 1875, 21 Wall. 175, 22 L. Ed. 627). See, also, *Appeal of Allyn* (1909, 71 A. 794, 81 Conn. 534, 129 Am. St. Rep. 22, 23 L.R.A.N.S., 630).

"Distribution of power by State among its governmental organs is commonly, if not always a question for State. (*Highland Farms Dairy* v. *Agnew* (Va. 1937, 57 S. Ct. 549, 300 U.S. 608, 81 L. Ed. 835, affirming 16 F. Supp. 575).)

"By the Constitution a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in

virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but, while the people are thus the source of political power, their governments, National and State, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere Majorities. (*In re Duncan* (Tex. 1891, 11 S. Ct. 573, 139 U.S. 449, 461, 35 L. Ed. 219).)

"That [clause] expresses the full limit of national control over the internal affairs of the State. (*South Carolina* v. *United States* (1905, 26 S. Ct. 110, 199 U.S. 437, 454, 50 L. Ed. 261, 4 Ann. Cas. 737).)

"An amendment to State constitution must not impair obligation of contract nor otherwise violate the obligation of contract under article 1, section 10, clause 1, or violate 14th amendment or any other provision of Federal Constitution, including this clause, and except as thus restricted, there is no limitation on the power to amend or rewrite State constitution. *Downs* v. *City of Birmingham* (1940, 198 So. 231, 240 Ala. 177).)

Mr. Chairman, frequently during the debate on the voting referee proposal I have pointed out that in the various versions or editions, starting with H.R. 10035 and ending with the Celler substitute to the McCulloch amendment, the terms of which are set forth in H.R. 11160, some progress was made in eliminating objectionable provisions or in substituting additional language, the total effect of which was to make the final version less objectionable and less unconstitutional than the first version.

Mr. Chairman, a member of the staff of the House Judiciary Committee has prepared a chart attempting to show in brief form the manner in which this transformation was accomplished from version to version. For the benefit of the membership and for its possible contribution to a proper understanding of the legislative history of this unusual voting referee proposal, I am incorporating that chart at this point in my remarks:

Major revisions of administration bill pertaining to voting rights

H.R. 10035 by Mr. McCULLOCH	H.R. 10625 by Mr. McCULLOCH	H.R. 11160 by Mr. McCULLOCH	Celler substitute with O'Hara amendment
Attorney General files an action under subsec. (c), § 131, Civil Rights Act of 1957 [42 U.S.C. 1971(c)] for a violation of subsec. (a) or (b).	Attorney General files an action under subsec. (c) Civil Rights Act of 1957 [42 U.S.C. 1971(c)] for a violation of subsec. (a).	Same as H.R. 10625	Same as H.R. 10625.
In the event the court finds a deprivation of the right to vote (because of State action) and that such deprivation was the result of a pattern or practice, the court may appoint voting referees to receive applications to vote from persons of the same race or color. No provision for the court to receive such applications.	In the event the court finds a deprivation of the right to vote, the Attorney General requests the court to find whether such deprivation was the result of a pattern or practice. Upon making an affirmative finding, the court may appoint voting referees and any individual of the same race or color may make application for an order of the court declaring his qualifications to vote. The court receives applications in the event no voting referee is appointed.	do	Do.
Not specified	Not specified	Voting referee must be a qualified voter in the judicial district.	Same as H.R. 11160.
After the finding of the pattern or practice and the appointment of a voting referee, the voting referee receives applications to vote and reports to the court which applicants are qualified to vote and have been deprived of the opportunity to register to vote or found not qualified to vote.	After the finding of the pattern or practice, any person of the same race or color, upon submitting proof of his voting qualifications, and that he was deprived of the opportunity to register to vote or was found not qualified to vote, has a right to an order of the court declaring him qualified to vote.	Same as H.R. 10625 except that, after the court makes an affirmative finding, the applicant must attempt to register and otherwise qualify to vote before making application to the court or to the voting referee.	Do.
Applicants do not have to prove that deprivation was because of their race or color. This is conclusively presumed after the court finding of the pattern or practice.	Same as H.R. 10035	Same as H.R. 10035	Same as H.R. 10035.
Not specified	Applications have to be heard within 10 days.	Same as H.R. 10625	Same as H.R. 10625.
Proceeding before voting referee left to discretion of the court.	Proceeding before the voting referee to be ex parte. Applicants' statement under oath is prima facie evidence of his age, residence, and prior efforts to register or otherwise qualify to vote. Applicant's answers to literacy test must be included in report to the court.	do	Do.
Not specified	After voting referee files report with the court, the Attorney General must transmit copies thereof to the State attorney general and to each party together with an order to show cause within 10 days why an order of the court should not be entered.	do	Do.
Nature of exceptions not specified	Exceptions as to facts must be supported by verified copy of a public record or by affidavit of person having knowledge of such facts. Exceptions as to law must be supported by a memorandum of law.	Exceptions as to facts must be supported by verified copy of a public record or by affidavit of person having knowledge of such facts, or by statement or matters contained in such report.	Same as H.R. 11160.
Court to accept findings in voting referee's report unless clearly erroneous.	Clearly erroneous standard dropped. Issues of law and fact raised by exceptions to be determined by the court or by the voting referee under procedures proscribed by the court. A hearing as to facts held only if affidavits disclose genuine issues of fact. Applicant's literacy determined solely from answers in voting referee's report.	Same as H.R. 10625 except a hearing as to facts will be held only if the proof (instead of affidavits) disclose genuine issues of fact.	Do.
Voting referees may attend the place for holding elections in order to determine whether qualified applicants were permitted to vote and whether their votes were counted.	Same as H.R. 10625	Voting referees may attend the place for holding elections in order to determine whether qualified applicants were permitted to vote.	Provision deleted, but restored by implication in O'Hara amendment, which provides that the court may authorize the referee or other persons to take appropriate action to enforce its decree.
Not specified	Notwithstanding inconsistent State law or court opinions qualified applicants are to be permitted to vote.	Same as H.R. 10625	Same as H.R. 10625.
Do	Court given authority to permit applicants to vote provisionally pending final determination of exceptions.	do	By O'Hara amendment, in cases of applications filed prior to 20 days before an election, which are undetermined at time of election, applicants shall be permitted to vote provisionally. In cases of applications filed within 20 days of an election, the court in its discretion may permit the applicant to vote provisionally. Court given authority to impound ballots and to take other action appropriate or necessary to enforce its decree.

Major revisions of administration bill pertaining to voting rights—Continued

H.R. 10035 by Mr. McCULLOCH	H.R. 10625 by Mr. McCULLOCH	H.R. 11160 by Mr. McCULLOCH	Celler substitute with O'Hara amendment
When a State official resigns and no successor is appointed, the action of the official is deemed that of the State and the proceeding may be continued against the State.	The action of the State official is deemed that of the State and the State may be joined as a party and, if prior to filing suit such official resigns and no successor is appointed, suit may be instituted against the State.	Same as H.R. 10625	Same as H.R. 10625.
Attorney General must furnish copies of original and supplementary decrees to appropriate State election officials, who are thereafter subject to contempt for refusing to permit qualified applicants therein named to vote.	Attorney General must furnish certified copies of the court order declaring applicants qualified to vote for appropriate State election officials, who are thereafter subject to contempt for refusing to permit qualified applicants therein named to vote.	do	Do.
The voting referee shall issue a certificate to each qualified applicant which identifies the holder as qualified to vote.	The court or the voting referee shall issue a certificate to each qualified voter which identifies the holder as qualified to vote.	do	Do.

Mr. BOW. Mr. Chairman, I ask unanimous consent to revise and extend my remarks.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOW. Mr. Chairman, I had intended to offer what I consider a very important amendment to this bill.

Mr. MEADER. Mr. Chairman, a parliamentary inquiry.

Mr. BOW. I do not yield for a parliamentary inquiry.

Mr. MEADER. If my amendment were voted on, the gentleman then could offer his amendment.

The CHAIRMAN. The gentleman does not yield for a parliamentary inquiry.

Mr. BOW. I do not desire to offer my amendment. Mr. Chairman, I would have offered the amendment if there had been sufficient time for full debate, and careful consideration on a very important amendment to protect individual rights. I have sat here day in and day out listening to the committee argue the merits and demerits of this bill; I have heard them ask for extra time, time and time again, and did not object; but now when we come to the point where others than the members of the committee might have some rights we are limited so we cannot properly debate important amendments.

The amendment I would have offered is not endorsed by the NAACP, but by the American Legion, the Veterans of Foreign Wars, the DAR, the DAV, and many other patriotic organizations. It is an amendment that would give to the American soldier the right to vote. I am not talking today only about trials in courts in foreign lands where our servicemen are deprived of their constitutional rights; I am talking about the American soldiers in this country who because they are on bases outside of their State are not permitted to vote. I am talking about those who in some areas such as in Ohio until quite recently were deprived of the right to vote, even though their wives were permitted to vote; and it seems to me unfortunate, Mr. Chairman. After all, the rights we are talking about in this bill are serious constitutional rights. Paragraph 14 of section 8 of article I of the Constitution provides we shall "make rules for the government and regulation of the land and naval forces."

That is a constitutional right that this House of Representatives and the Congress of the United States should protect which we are not defending. It seems to me we are beginning to think in terms of invading States rights, we are doing things in this bill that may do violence to the Constitution; and I resent the action that will deprive—I will withdraw that, and say that I regret that the chairman of the committee has seen fit to limit this debate so that all the questions of constitutional rights which should be protected cannot be. All members of the committee have had ample time to debate pro and con. The important amendment I would have offered cannot and should not be debated in 2½ minutes, the time allotted to me by the motion of the distinguished chairman of the Judiciary Committee. The American serviceman should have at least equal treatment with the sharecropper in the South. Those who have joined in the limit of debate do a great disservice to our Armed Forces everywhere.

The amendment I had at the Speaker's desk to offer is as follows:

Insert a new title VI:

"CONSTITUTIONAL RIGHTS OF MEMBERS OF THE ARMED FORCES OF THE UNITED STATES

"That section 2172 of title 5 of the United States Code is amended (1) by inserting '(a)' immediately before 'To afford ample', and (2) by adding at the end thereof the following:

"'(b) Any member of the Armed Forces serving within the United States whose State of residence fails to comply with these recommendations shall be entitled to vote for the offices of President and Vice President in the State in which he is stationed.'

"2. That section 802 of title 10 of the United States Code (article 2 of the Uniform Code of Military Justice) is amended (1) by inserting '(a)' immediately before 'The following persons', and (2) by adding at the end thereof the following:

"'(b) (1) Notwithstanding the provision of any treaty, agreement or protocol, no person subject to this chapter pursuant to paragraph (1) of subsection (a) shall be subject to the criminal laws of any foreign nation for any alleged offense arising out of any act or omission taking place while he is on duty. The Department concerned shall not relinquish jurisdiction of, or surrender, any person so subject to this chapter to any foreign nation for the purpose of prosecution under the criminal laws of such nation for any alleged offense arising out of any act or omission taking place while such person is on duty.

"'(2) Notwithstanding the provision of any treaty, agreement, or protocol, the Department concerned shall not relinquish jurisdiction of, or surrender, any person so subject to this chapter to any foreign nation for the purpose of prosecution under the criminal laws of such nation for any alleged offense arising out of any act or omission taking place while such person is not on duty, unless such Department has determined that, if such person is prosecuted under the criminal laws of such nation, he will have available to him procedural safeguards in such prosecution which afford him substantially the same protection as he would have if he were being prosecuted for such offense in a general court-martial convened under this chapter, including, but not limited to, the following:

"'(A) The acused is to have the assistance of counsel for his defense;

"'(B) The accused is entitled to be present at his trial;

"'(C) The accused is entitled to be confronted with the witnesses against him;

"'(D) The accused is entitled to have compulsory process for obtaining witnesses in his favor;

"'(E) The burden of proof is on the Government;

"'(F) The accused is entitled to be tried by an impartial court;

"'(G) The accused is entitled to be protected from the use of a confession obtained by torture or other illegal or improper means;

"'(H) Cruel and unusual punishment shall not be inflicted;

"'(I) The accused is entitled to a prompt and speedy trial.'"

What honest, real, Member of the House would oppose the amendment above?

The CHAIRMAN. The gentleman from New York [Mr. WAINWRIGHT] is recognized.

Mr. WAINWRIGHT. Mr. Chairman, at this point I would like to yield to the gentleman from Massachusetts [Mr. CURTIS].

Mr. CURTIS of Massachusetts. The gentleman from Virginia [Mr. POFF] tried to make it appear as a part of this record that the intention of the House was that the finding referred to on page 2, line 3, of H.R. 11160, which is now a part of the Celler amendment, was a final and appealable order.

The bill at that point provides that the court, upon request of the Attorney General and after notice and hearing,

shall make a finding as to whether there was a pattern or practice of discrimination.

I doubt whether what we say here will have much influence on a court which must pass on this question after this bill becomes law. But for the sake of the record I want to have it appear that some of us believe that this legislation does not contemplate or intend that the above finding shall be a final and appealable order.

In the words of the bill, it is referred to not as an order or decree but as the finding. The bill then goes on to provide that after such finding and other proceedings the court is to make an order declaring that the applicant before the court—who claims that his voting rights have been improperly denied—is qualified to vote.

It is this order declaring the applicant qualified to vote which I believe is the final order, and I submit that the prior finding of a pattern or practice of discrimination is not a final and appealable order but is an interlocutory finding.

Mr. WAINWRIGHT. Mr. Chairman, the gentleman from Virginia [Mr. POFF] asked the gentleman from New York [Mr. LINDSAY] a question. I yield 1 minute to the gentleman from New York [Mr. LINDSAY] to answer the question.

Mr. LINDSAY. Mr. Chairman, in the event a proceeding is brought under the 1957 Civil Rights Act as it stands, I take it that a finding by the court stating that individuals have been denied the right to vote is a final order and, therefore, would be appealable. This is the law today.

Now if in such a proceeding the court should go on and find there was a pattern of practice of voting discrimination, such a finding would be part of the same proceeding and therefore would also be appealable.

Mr. WAINWRIGHT. I thank the gentleman from New York. I now yield to the gentleman from Michigan [Mr. CEDERBERG].

Mr. CEDERBERG. Mr. Chairman, I have been listening to this debate for a long time. It seems to me if you are as confused as I am the thing we ought to do is to take all the lawyers off the Committee on the Judiciary and put nonlawyers on that committee, then possibly we could write a bill that some of us would understand.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. McCULLOCH].

Mr. McCULLOCH. Mr. Chairman, the Committee, a day or two ago, had before it the amendment, in substance, which is now before the Committee. The decision on the prior amendment was a sound one, I submit, and I hope the decision of the Committee again will be to reject the pending amendment.

I want to say again, Mr. Chairman, that if there be a finding by the court that there is a pattern or practice of discrimination against one by reason of race or color that finding followed by an order or decree appointing a referee or for other purposes is a final order or decree which is subject to appellate review.

The CHAIRMAN. The Chair recognizes the gentleman from New York [Mr. CELLER].

Mr. CELLER. Mr. Chairman, in essence what the amendment of the gentleman from Michigan does is to do away with all idea of presumption and patterns or practices of discrimination, which is the very kernel of the bill, and would make of the proceeding strictly a master proceeding under a U.S. district judge. That, as far as according voting rights or registration rights to the Negro, would be just about as useless as trying to make a tiger eat grass or a cow eat meat. They just will not do it.

What the gentleman from Michigan is trying to do just will not work. For that reason the amendment must be voted down.

Beyond that, we have the same old dodge brought before us that every one of these proceedings, hundreds of them, shall be what is known as an adversary proceeding, no ex parte proceedings. That would make all of these proceedings interminably long and before you could get any kind of remedy the election or the elections would have passed. So that what the gentleman is really trying to do is to destroy the bill. It may be in good faith, but he is destroying the bill.

For that reason I hope the amendment will be decisively voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. MEADER].

The amendment was rejected.

Mr. WHITENER. Mr. Chairman, in a colloquy yesterday which I had with the gentleman from Pennsylvania [Mr. QUIGLEY] I question the accuracy of his legal conclusions stated on the floor last Thursday. As the RECORD for yesterday will show, I quoted from Bouvier's Law Dictionary the law with reference to the question as to whether a conclusive presumption of legitimacy of a child arises upon evidence that the child was born to a married woman. The law is clear that a conclusive presumption does not arise, but that evidence of the marriage of the mother merely makes a prima facie case of legitimacy which is subject to rebuttal.

The gentleman from Pennsylvania then insisted that his statements of last Thursday with reference to conclusive presumptions in other situations did exist in law. He said:

> A girl under the age of consent is conclusively presumed not to be able to give her consent to carnal knowledge; and, second, in American criminal law, a male under the age of 14 is conclusively presumed to be incapable of commiting rape.

While I do not desire to further engage in contention with my valued and distinguished friend from Pennsylvania, I do feel that the record should be thoroughly clear for the laymen in the House of Representatives as to the existence of such conclusive presumptions. In order that my colleagues may have the benefit of the true picture as to the law, I have elected to quote from a well-known reference book on criminal law, to wit, "Miller on Criminal Law."

At page 119, section 34(a), Judge Miller states:

> At common law a child under the age of 7 years is conclusively presumed incapable of entertaining criminal intent, and cannot commit a crime. Between the ages of 7 and 14 a child is presumed to be incapable, but the presumption may be rebutted. After the age of 14, he is presumed to have sufficient capacity, and must affirmatively show the contrary.
>
> The ground of an infant's exemption from criminal responsibility for his acts is the want of sufficient mental capacity to entertain the criminal intent which is an essential element of every crime. If a child, when he commits a wrongful act, is under the age of 7 years, not even the clearest evidence, not even his own confession, indeed, will be received on the part of the State, to show that he was possessed of a responsible discretion. Under that age, he is absolutely irresponsible. If, however, he has reached the age of 7, the State is permitted to prove that he was of sufficient capacity to entertain a criminal intent. In the absence of such proof, he is not responsible, and the proof, to warrant conviction, must be clear and convincing. It has been held that a conviction cannot be had on his own mere naked confession, but there are cases holding the contrary, where the corpus delicti is otherwise proven. If his age is itself in doubt, the burden of proving that he is under 14 is on him, "as the reputed age of everyone is peculiarly within his own knowledge, and also the persons by whom it can be directly proved." When a child has reached the age of 14, he is presumed capable of committing crime; and, to escape responsibility, he must affirmatively show want of capacity. * * * There is also an exception in the case of rape, arising from a presumption as to the physical incapacity of an infant. This, however, will be mentioned in treating of the crime of rape.

And, speaking to the subject of consent of a child to the act of carnal knowledge, Judge Miller says on page 296, section 96(b), in part:

> At common law, a child under the age of 10 years is deemed incapable of consenting, as she cannot know the nature of the act, and her consent is therefore no defense. It has even been held that a girl of 12 is incapable of consenting at common law. In most of the States there are statutes which fix an age below which a girl cannot consent to sexual intercourse, by providing that carnal knowledge of a female under that age shall be rape, whether she consents or not. Here, of course, consent is no defense. In some States the age is fixed as high as 18 years.

Further writing on this subject on page 300, section 97(g), Judge Miller says:

> A boy under 14 is under the common law of England conclusively presumed incapable of committing the crime. Such is also the law with us in some of the States. Some courts, on the contrary, hold that the common-law rule is not applicable, and refuse to follow it, on the ground that, because of the difference in climate and other conditions, boys mature earlier in this country than in England. Other courts hold that the common-law rule applies so far as it raises a presumption of incapacity, but that the presumption is not conclusive, and may be rebutted. A boy under 14, if of sufficient mental capacity, may, however, be guilty as principal or accessory to the crime committed by another. We have already considered in another connection the question

whether a boy who is too young to commit rape may be guilty of an attempt to commit it.

Mr. Chairman, as I have heretofore stated, it is not my intention to further prolong contention with my dear friend the gentleman from Pennsylvania [Mr. QUIGLEY] on this subject. My sole purpose in making these further remarks is merely to give to the membership of the House the benefit of the knowledge of one of our leading authorities on criminal law, Justin Miller. Perhaps this will serve to eliminate any misunderstanding as to the existence or nonexistence of conclusive presumptions in the fields of the law mentioned by the gentleman from Pennsylvania and me in previous colloquies.

Mr. MULTER. Mr. Chairman, the matter of civil rights has long been a national problem.

Only a small but very important part thereof has been a sectional problem.

The matter of discrimination in housing and in employment because of race, color, or creed needs just as much attention in the North as it does in the South.

Peculiarly enough, however, the denial of the right to vote has been a sectional one, limited almost entirely to certain parts of the South.

The right to vote is guaranteed to American citizens by our Constitution and it is the duty of the Congress to enact laws which will assure every qualified voter that the privilege may be exercised without fear or favor.

In that connection, I am pleased to call the attention of our colleagues to the following item, written by Dr. Rufus Clement, president of Atlanta University and an elected member of the Atlanta Board of Education:

TO A DEMOCRATIC BALLOT

(By Rufus Clement)

The fact that the Negro cannot vote as he is entitled to in the South is an uncomfortable proposition for all Americans. It is also undeniable.

One of the excuses advanced by southern politicians for their actions in attempting to limit or to nullify the Negro vote is that they fear that any policy of free and full registration of qualified Negro voters will result in the establishment of a bloc vote by which, in some political subdivisions where more Negro than white people reside, the Negroes would take over government. Many of these same politicians have shown by their actions and have demonstrated in their public speeches the type of racial prejudice which would not hesitate to deny to all Negroes the basic rights promised all citizens by the Constitution of the United States and the constitutions of the individual States. These politicians who seem to fear bloc voting on the part of Negroes are for the most part those individuals who feel that they have so conducted themselves that their candidacies would not be supported by Negro people.

When racial matters are not at issue the Negro vote tends to follow the national as well as local voting trend. If all qualified members of this group were registered and entitled to participate in local and national elections, it would be discovered that, having been victims of biased government, this group would be particularly interested in improving the quality of leadership which is placed in the public offices of Southern States. Previous experience with men who "talked out of both sides of their mouths" would indeed make the Negro wary of supporting such men for public office. The election of officials pledged to fair and equal treatment of all the people, without favoritism to any because of race, creed, economic and social standing, or color—provided of course they are otherwise qualified for the positions they seek—would sharply upgrade southern political leadership in many areas. This has already been demonstrated in Nashville, Atlanta, Louisville, Little Rock, and other southern cities.

In a chart which accompanied the article, Dr. Clement pointed out the following:

In Alabama, only 80,000 Negroes were registered to vote out of an eligible Negro population of 500,000, and the figures in each of the following States were:

Arkansas, 70,000 out of 200,000.
Florida, 140,000 out of 400,000.
Georgia, 170,000 out of 600,000.
Louisiana, 130,000 out of 500,000.
Mississippi, 20,000 out of 500,000.
North Carolina, 150,000 out of 500,000.
South Carolina, 50,000 out of 400,000.
Tennessee, 180,000 out of 300,000.
Texas, 220,000 out of 600,000.
Virginia, 100,000 out of 400,000.

This bill, if not watered down, will go a long way toward remedying this grievous situation and righting a wrong that must not be permitted to continue.

The CHAIRMAN. The question now recurs on the substitute offered by the gentleman from New York [Mr. CELLER] to the amendment offered by the gentleman from Ohio [Mr. MCCULLOCH].

The question was taken; and on a division (demanded by Mr. MURRAY) there were—ayes 199, noes 104.

So the substitute amendment was agreed to.

The CHAIRMAN. The question now recurs on the McCulloch amendment as amended by the Celler substitute.

The question was taken; and on a division (demanded by Mr. WILLIAMS) there were—ayes 192, noes 112.

So the amendment as amended was agreed to.

Mr. CELLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CELLER: at the end of title VI add the following new title:

"POLL TAXES

"SEC. . The requirement that a poll tax be paid as a prerequisite to voting or registering to vote at primaries or other elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, is not and shall not be deemed a qualification of voters or electors voting or registering to vote at primaries or other elections for said officers, within the meaning of the Constitution, but is and shall be deemed an interference with the manner of holding primaries and other elections for said national officers and a tax upon the right or privilege of voting for said national officers and an impairment of the republican form of government.

"SEC. . It shall be unlawful for any State, municipality, or other government or governmental subdivision to prevent any person from voting or registering to vote in any primary or other election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, on the ground that such person has not paid a poll tax, and any such requirement shall be invalid and void insofar as it purports to disqualify any person otherwise qualified to vote in such primary or other election. No State, municipality or government or governmental subdivision shall levy a poll tax or any other tax on the right or privilege of voting in such primary or other election, and any such tax shall be invalid and void insofar as it purports to disqualify any person otherwise qualified from voting in such primary or other election.

"SEC. . It shall be unlawful for any State, municipality, or other government or governmental subdivision to interfere with the manner of selecting persons for national office by requiring the payment of a poll tax as a prerequisite for voting or registering to vote in any primary or other election for President, Vice President, electors for President or Vice President or for Senator or Member of the House of Representatives, and any such requirement shall be invalid and void.

"SEC. . It shall be unlawful for any person, whether or not acting under the cover of authority of the laws of any State, municipality, or other government or governmental subdivision, to require the payment of a poll tax as a prerequisite for voting or registering to vote in any primary or other election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives.

"SEC. . For the purposes of this Act, the payment levying or requirement of a poll tax shall be construed to include any charge of any kind upon the right to vote or to register for voting, in any form or evidence of liability to a poll tax or to any other charge upon the right to vote or to register for voting."

Mr. SMITH of Virginia. Mr. Chairman, I make a point of order against the amendment on the ground that it is not germane to the bill under consideration. It has no earthly connection with anything in the bill and should not be considered.

The CHAIRMAN. Does the gentleman from New York care to be heard on the point of order?

Mr. CELLER. Yes, Mr. Chairman. It has a great deal of earthly connection with the bill. When this bill was first opened for amendment, the Chair ruled that the main purpose of the bill was voting rights. A poll tax is a charge upon the right to vote. It is a price tag, if I may use that term, placed upon the right to vote. It is not a qualification because it is universally applied. When you apply it universally it cannot be a qualification because it appertains to all. Since it is a burden upon the right to vote it is eminently within the four squares of the bill. It would avail naught for a person to be declared qualified and to have the right to vote and then be confronted with a poll tax.

So in that sense the removal of the poll tax is certainly within the purview of the purposes of the bill as a whole and I therefore urge upon the Chair the germaneness of the amendment.

Mr. POFF. Mr. Chairman, may I be heard on the point of order?

The CHAIRMAN. The Chair will hear the gentleman from Virginia.

Mr. POFF. Mr. Chairman, first of all it must be manifest that we are not here concerned with the merits or the demerits, the morality or the immorality, of the poll tax as a prerequisite to vote. We are here considering whether or not

the amendment offered by the gentleman from New York is germane. I submit that it is not germane.

The first question the Chair will want to consider, of course, is whether the imposition of the poll tax as a prerequisite for voting is a matter of qualification of a voter under article I, section 2, or whether it involves the manner of holding an election. Clearly, if it does involve the manner of holding an election, the Congress under article I, section 4, does have the jurisdiction to deal with the question on a statutory basis. If on the other hand it involves the question of the qualification of a voter, then indisputably the States and the States only have the right to deal with the situation. Article I, section 2, specifically provides that the States shall have that jurisdiction.

It has been repeatedly ruled by the Supreme Court of the United States, and I cite the Thompson case and the Breedlove case, that the poll tax enacted by the several States as a prerequisite to voting is a constitutional exercise of the State's power, the 15th amendment to the Constitution notwithstanding. What the courts have ruled to be a constitutional exercise of their power cannot be denied to them by a simple statutory enactment of this body but by a constitutional amendment only. Accordingly, and citing in summation a statement from the September 9, 1959, report of the Civil Rights Commission at page 118, I quote the following:

> The debate on these bills would thus seem to indicate that the constitutionality of Federal anti-poll-tax legislation is at least doubtful.

Mr. Chairman, I urge that the Chair sustain the point of order.

Mr. KASEM. Mr. Chairman, may I be heard on the point of order?

The CHAIRMAN. The Chair will hear the gentleman from California.

Mr. KASEM. Mr. Chairman, the gentleman from Virginia argued the constitutionality of a provision and that is not in issue under consideration of the point of order. This amendment that is offered by the distinguished chairman of the Committee on the Judiciary must be construed in one of two lights. It is either an amendment that goes to voting rights or it is a bill that has to do with matters of revenue. It cannot be considered to be an amendment having to do with matters of revenue because it in no way affects the Federal revenue. It is an amendment that has to do with lifting a discriminatory burden from those of lesser means in connection with the right to cast a vote. If the Chair is to be consistent in its rulings, and if it is to be logical in its rulings, it must hold this to be germane.

The CHAIRMAN (Mr. WALTER). The Chair is ready to rule.

As desirable as it may be to eliminate the poll tax as a qualification for voting, nevertheless the legislation under consideration is not the proper vehicle to use to meet this question.

The Chair feels that the question is clearly one of qualifications under the Constitution and, therefore, can be dealt with only through a constitutional amendment. It is significant that bills on this subject, and there are a number of them, have been referred to a committee other than the committee having jurisdiction of the subject matter of the pending bill. Therefore, the Chair holds that the amendment is not germane and sustains the point of order of the gentleman from Virginia.

Mr. CELLER. Mr. Chairman, I ask unanimous consent to extend my remarks at this point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

SIMILAR LEGISLATION

Mr. CELLER. Mr. Chairman, This amendment is the same as H.R. 3199 which passed the House in the 81st Congress by 273 to 116. Similar bills passed the House in the 77th, 78th, 79th, and 80th Congresses, each time by more than a two-thirds majority.

DETERRENT EFFECT OF POLL TAX

Experience shows that the number of voters in poll-tax States is considerably fewer than in non-poll-tax States. For example, in 1944, a presidential election year in the eight States which then had poll taxes, only about 18 percent voted. In the 40 non-poll-tax States over 68 percent voted.

In 1958 in not one of the five States which still retained the poll tax did more than 50 percent of those of voting age become eligible to vote by paying their poll taxes. Contrast the registration in two Southern States, Florida, a non-poll-tax State, and Texas, a poll-tax State. In 1958 in Florida, registered voters constituted some 90 percent of the voting age population as determined by the most recent census. In Texas, on the other hand, a poll-tax State, the registered voters constituted only about 35 percent of the voting age population as determined in the most recent census.

RELEVANT CASES

The Supreme Court has, on numerous occasions, sustained the right of Congress to enact legislation to prevent interference with the election of Federal officials. Thus, in *Burrows & Cannon* v. *United States* (290 U.S. 534 (1934)) the Supreme Court upheld the Federal Corrupt Practices Act regulating the election of presidential electors. The Court said:

> The President is vested with the executive power of the Nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the Nation in a vital particular the power of self-protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the General Government from impairment or destruction, whether threatened by force or by corruption.

In Ex parte Yarbrough, the Supreme Court sustained the validity of a statute which made it an offense to conspire to interfere with the right of a citizen to cast his vote in favor of an elector for President or Vice President or for a Member of Congress. The Court said:

> That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the legislature is elected by the people directly, has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration.

Mr. BARDEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. BARDEN: On page 9, beginning with line 11, strike out everything down through line 23.
>
> On page 9, line 24, strike out "(b)" and insert "SEC. 502.".
>
> Beginning with line 14 on page 10, strike out everything down through line 7 on page 12.

Mr. BARDEN. Mr. Chairman, I ask unanimous consent to revise and extend my remarks and to proceed for 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. BARDEN. Mr. Chairman, I offer this amendment to title V of this bill because I think it is necessary; and I think my amendment is the way to prevent irreparable damage to a very fine and beneficial program. Title V amends Public Law 874 and Public Law 815. It does not do anything else but amend these two public laws which were passed in 1950 and have been renewed several times since. Many Members of the House, including myself, consider these laws very valuable pieces of legislation. For the last several years, as a matter of fact, the committee has had under consideration an amendment to one of these acts. I do not know how on earth this ever got to the Committee on the Judiciary. The Department of Health, Education, and Welfare sent the message down to my committee. I never dreamed that the Committee on the Judiciary had it until I saw it in this bill the other day. Now I am not accustomed to this—probably, if I stay here 26 more years, I might get to be—but I doubt it. The amendment proposes to rework Public Laws 874 and 815. I think I know what they intended doing, and I am in perfect accord with it; but it has nothing more to do with civil rights than it has to do with the African revolutions.

The first thing they wanted to do, and I repeat I am in accord with it, was to amend Public Law 874 so that onbase military children could be considered just the same as offbase military children are considered and vice versa. That is to say the offbase children and the onbase children are to be considered the same with reference to the school proposition. Well, I am in favor of that. I know what they have in mind and it is good. It is provided here that the money shall come from Public Law 815 to take care of any emergency or any temporary school arrangements for these children should they be inconvenienced.

It is all right to do that. But then they come along, after recognizing the problem, after taking care of these children, after providing that the money should come from 815 to do it, then they add a provision that the Commissioner of Education can reach out and take a school building, built in some instances with 90 percent local money, take it over, commandeer it, manage it, and direct it.

In the first place, they are putting this amendment on a temporary bill that expires in June 1961. That will not work. The other thing is that when they take a school building, set up a school and operate it under title V, if enacted, then I doubt seriously if 815 will ever be extended again. There is a provision in this title that requires any local school setup applying for funds under 815 to put in a clause agreeing to the U.S. Commissioner's taking over the school building. That requirement will kill 815 right away. The next thing is, when you take up 874 next year, you will run into the same problem. Then pretty soon you will have a school construction bill pending. If title V becomes law it will be the kiss of death to a school construction bill. It may cause some of you to vote for it, but it will encourage more of you to vote against it. The psychological damage done to 874 and 815 is bad, because those two bills have done a tremendous amount of good in this country. I cannot conceive of anyone thinking it would be necessary to reach over and take these school buildings as a temporary measure. There are a tremendous number in this House, always making speeches, "We are for the bill without Federal interference." Well, you will have to amend your speeches, because this title will empower the U.S. Commissioner to take school buildings and operate them in accordance with his own whim, and that is the most direct form of Federal interference imaginable. It will not be accepted by the people of this country and should not be. I made a remark the other day that you are now touching the very nerve center of the American people when you begin to touch their schools. We have said, "All right. We will take care of the on-base children and the off-base children. We will provide the money and the facilities; on base, or wherever the Commissioner sees fit to have them, temporary off base facilities. That is all right if an emergency exists." Then why do we want to put in the objectionable horrible feature that allows the U.S. Commissioner of Education to reach out and take school buildings that were constructed primarily with local tax money?

This proposition simply has no bearing on civil rights. The Judiciary Committee has no business assuming jurisdiction, and the language should not remain in the bill. There is no point in injecting a civil rights issue into the military schools situation.

Mr. WIER. Mr. Chairman, will the gentleman yield?

Mr. BARDEN. I yield.

Mr. WIER. Mr. Chairman, I think perhaps I may enlighten the gentleman and I think it will turn out that we are in complete agreement with certain objectives of this amendment. I think the principal objection the gentleman raises in this amendment is that, wherever a school district becomes involved with the Supreme Court decision and that school district has military pupils or the students of military personnel in the school, the military feels they ought to have a right to have the school under some condition for the education of the children. I gain the impression from the presentation of the gentleman's amendment that it would eliminate the Department of Health, Education, and Welfare from going beyond military bases in opening schools that are now closed because of disagreement with the Supreme Court decision. The gentleman has pointed out instances in which they have gone into fields they have no business entering, and the gentleman would limit the HEW interest to schools that have military personnel or students that were closed because of desegregation or the desegregation argument. Is that correct?

Mr. BARDEN. Yes; I assume that was the object they had in mind when they put this language in the bill. But let me say I am perfectly in harmony with taking care of them, and that is why I want to treat off-base and on-base schools exactly the same. As a matter of fact, most of the bases have their education systems on base anyway, which they operate as they please, much the same as they do in my district.

The CHAIRMAN. The time of the gentleman from North Carolina has expired.

Mr. WILLIS. Mr. Chairman, I ask unanimous consent that the gentleman from North Carolina [Mr. BARDEN] may proceed for 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. WILLIS. Mr. Chairman, will the gentleman yield?

Mr. BARDEN. I thank the gentleman for getting me the extra time. I yield to the gentleman.

Mr. WILLIS. I appreciate the gentleman's statement; it is very clarifying and edifying to me personally. The gentleman pointed out, for instance, that either one or both of these public laws being amended by the Judiciary Committee might expire sometime. The gentleman in the well of the House knows as much, if not more, about public education as any Member of the House, but on the Judiciary Committee we seldom hear about matters involving public education because that is not under the jurisdiction of our committee.

Mr. BARDEN. I will say to the gentleman from Louisiana that I helped write the first one and I helped write the last one, but this is the first time I have ever had anything taken away from me. The House knows generally that I have advocated separation of the Committee on Education and Labor simply for functional purposes. It is a pretty difficult operation. But I never dreamed there would be a coup that would be so quietly pulled off.

But they did not do too much damage except in going further than was necessary.

I want to educate those children on and off the bases; I want the money available to make temporary arrangements or whatever arrangements are necessary. I want the Commissioner to have the authority to rent or provide facilities and all that. I think they did a fairly good job in the arrangement except they went much further than was necessary.

Mr. DIXON. Mr. Chairman, will the gentleman yield?

Mr. BARDEN. I yield.

Mr. DIXON. Public Law 815 and Public Law 874 have been extremely valuable in sections of the country where we have federally impacted areas and federally impacted schools.

If this bill will result in the killing of those two laws, I think it would be a calamity to the United States. I believe, as our honored chairman has just stated, if this bill is passed without his amendment it is pretty well going to be the ruination of Public Laws 815 and 874. I submit we had better consider very, very carefully this amendment and its effect upon some very, very important areas of the United States, especially where we are manufacturing missiles and military equipment.

Mr. BARDEN. I thank the gentleman. We took this up in committee, and I think all of the members were there. The gentleman from West Virginia [Mr. BAILEY] introduced these bills. I was very close to him all these years. I do not know whether he is here or not, but he told me he was going to have something to say about this because it would mix up a situation and do more damage than we might think.

Mr. CRAMER. Mr. Chairman, will the gentleman yield?

Mr. BARDEN. I yield to the gentleman from Florida.

Mr. CRAMER. This provision the gentleman's amendment applies to is 815, the section involving school construction; is that correct, so far as taking over schools is concerned?

Mr. BARDEN. That is about right.

Mr. CRAMER. May I ask this further question. I had a similar amendment which I intended to offer. Is it not the gentleman's opinion that the requirement of subsection 8, the assurance of the local community as a condition precedent to getting funds will result in a school subsequently being turned over to Federal authority? There is no school superintendent in the United States that has authority under the law to enter into any such agreement. The result will be that all federally impacted schools will be denied to every segment of our Nation.

Is that the gentleman's opinion, may I ask the gentleman?

Mr. BARDEN. Of course that is true. In the first place, the minute they put that requirement in there it becomes an encumbrance upon that building, it is an encumbrance upon the taxpayers' money that is spent for that building. It simply will not work, and they will not go

for it, that is all. You might as well repeal the law.

Mr. CRAMER. The amendment that I had intended to propose, although I am supporting the gentleman's amendment as an alternative and will not offer it unless the gentleman's amendment is not agreed to, contained a provision that would make it discretionary with the State to enter into agreements permitting the Federal Government to occupy buildings that might be closed, but does not make it mandatory as the committee bill provided.

Mr. BARDEN. It is discretionary now if the local school people or the State school people want to rent buildings. It is discretionary now.

To summarize, Mr. Chairman, title 5 of the bill H.R. 8601 proposes to amend Public Laws 815 and 874, laws not only clearly within the jurisdiction of the Committee on Education and Labor, but which were reported by the Committee on Education and Labor and passed by the House. Public Laws 815 and 874 provide for assistance to local school districts in federally impacted areas. Under Public Law 815, payments were made to help build schools in districts burdened with substantial increase in their school memberships due to Federal activities. Under Public Law 874, payments are made to local school districts to help meet their operating and maintenance expenses where such districts are providing education for federally connected children.

The Federal Government may not plan or operate any local school facility receiving funds under either Public Law 815 or 874.

The reason for the amendment proposed by title 5, as stated in the report of the House Judiciary Committee, is to provide for the education of children of members of the Armed Forces who live off the installation, when the school which they attend has been closed by State or local action. To solve this problem, the amendment proposes that the Commissioner of Education be empowered to, first, provide school facilities on a temporary basis to these children by acquiring, through rental or temporary construction, either on or off base, the facilities necessary for this purpose—the amendment would also provide teachers and operating expenses for such facilities; second, where a school which had been constructed with the aid of funds provided under Public Law 815 is closed by State or local action, the Commissioner would be authorized to take control of and operate such local educational facility in order to provide for the education of children of members of the Armed Forces.

Now, Mr. Chairman, my quarrel is with the second of the proposed solutions. This amendment would for the first time in our history authorize a Federal official to actually seize and operate local school facilities. Such action introduces into our traditional and time-honored philosophy of education, a totally new and alien concept. This amendment would establish the principal that where Federal funds are used to construct local educational facilities, they might at some future date be subject to Federal seizure and operation. To be sure, the amendment proposed here today does not include all Federal funds nor those funds used in the past, but it is only a short step to such a proposal. This amendment establishes the precedent, and once established, it is easily extended. If such legislation as that proposed by this bill is enacted it will most certainly be the "kiss of death" to any form of Federal aid to education in the future. Why is this so? Because the proponents of Federal aid to education have always maintained that Federal control does not follow Federal money; that it is possible for the Federal Government to allot funds to the States for educational purposes without the danger of Federal interference or control. If this title is enacted into law, Mr. Chairman, the seeds for destruction to our educational system have been sown, and I need not remind this House that our educational system lies at the very heart of our Nation.

Furthermore, this proposal would utterly destroy the effectiveness of Public Law 815 and 874. The amendment proposed by title 5 would require a State or local government to agree in advance before any funds were received, to turn over the facility to the Commissioner of Education upon his request providing only that the school was not then being used for educational purposes. Could conscientious local officials agree to such conditions even if their State and local laws allowed them to?

Let me emphasize that this amendment is not limited to schools involved in desegregation suits, but extends to any closing of a local educational facility by State or local action.

Finally, Mr. Chairman, that portion of title 5 that authorizes the Commissioner of Education to take over the local educational facilities is totally unnecessary. The problem as stated by the report of the Judiciary Committee would be completely eliminated by the other provisions of title 5. These provisions would authorize the Commissioner to provide school facilities, teachers, and operating expenses for the purpose of educating the children of the members of the Armed Forces who live off the base in the event their schools were closed by local or State action. The Commissioner could purchase, rent, or construct on a temporary basis the necessary facilities either on base or off. What more could be done?

The sole effect of the amendments to title I which I propose would be to strike from the title those sections authorizing the Commissioner of Education to take over and operate local educational facilities. Such authority has been shown to be totally unnecessary to a solution of the problem.

The CHAIRMAN. The time of the gentleman from North Carolina has expired.

Mr. CELLER. Mr. Chairman, I rise in opposition to the pending amendment.

Mr. Chairman, the amendment offered by the gentleman from North Carolina would be a weakening amendment. I am sure if he prevailed he would still vote against the bill. He naturally is jealous of the prerogatives of his own committee, the Committee on Education and Labor. I am jealous of the prerogatives of the Committee on the Judiciary. That is only natural and proper. But there are occasions where there is overlapping and it is difficult to avoid the overlapping. As chairman of the Committee on the Judiciary I did not seek, for example, the provisions of this title that is being sought to be amended. It was in an Executive communication that was received. It was a package bill, and it pertained to a number of subjects, including education. Therefore, it was appropriate and proper because the main ingredients of the bill were for the Judiciary Committee to consider.

I sympathize with the gentleman from North Carolina but I am nonetheless reminded of a story they tell about Lincoln. One day an aide rushed into Lincoln's office and he said, "Mr. Lincoln, Mr. Lincoln, Senator Sumner in the Senate today said he does not believe in the Bible." Lincoln said, "Of course, he does not. He did not write it."

The gentleman from North Carolina did not write this amendment, it did not eminate from his committee and, therefore, he is opposed to this bill or this title more or less in toto.

Mr. HOFFMAN of Michigan. Mr. Chairman, I demand that the words be taken down.

The CHAIRMAN. What are the words the gentleman refers to?

Mr. HOFFMAN of Michigan. The words, "He did not write it, therefore he is against it." I say it is a reflection on a Member of the House.

Mr. BARDEN. You let me take care of my reputation.

The CHAIRMAN. Does the gentleman from Michigan insist that the words be taken down?

Mr. HOFFMAN of Michigan. Yes. It is a reflection on a Member of the House in his representative capacity.

Mr. BARDEN. Mr. Chairman, would it be in order to straighten this out merely for me to say that by the wildest stretch of the imagination I cannot conceive that it is a reflection upon me? I do not so interpret it.

The CHAIRMAN. Does the gentleman from Michigan withdraw his request?

Mr. HOFFMAN of Michigan. If the gentleman from North Carolina considers it a compliment, it is all right with me.

Mr. CELLER. Mr. Chairman, I gave that story not with a view to disparaging the gentleman from North Carolina, I can assure the gentleman. It was just a story that has often been related; related about myself and related about many others.

Now, there has been the fear expressed that this particular title would involve improper interference by the Federal Government in local education. I should like to read two sections which clearly indicate that there is no intention to interfere in any sense of the word with any curriculum or any mode of instruction in the State. I am now reading from section 242, Public Law

874, title 20, which is still law, and we do not touch it:

In the administration of this chapter no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system of any local or State educational agency.

And again I read from Public Law 815, section 642, of title 20, involving those provisions setting forth moneys for school construction, which reads as follows:

In the administration of this chapter no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system of any local or State educational agency.

I repeat, we do not touch those sections of the statute.

Mr. BARDEN. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from North Carolina.

Mr. BARDEN. If you are going to tie that to it, of course, that is unnecessary under the title Construction of Buildings. But, what you are trying to do, my friend, is enable the commissioner to operate the schools. Now, if you make that applicable to your act, you are fixing to put the military children out of school, because someone connected with the Government must run them. What I have done is provide the money, provide the buildings, provide the temporary arrangements.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. CELLER. Mr. Chairman, I ask unanimous consent to proceed for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. BOW. Mr. Chairman, I object.

Mr. THOMPSON of New Jersey. Mr. Chairman, I rise in opposition to the amendment.

This is a particularly difficult problem in view of the wide acceptance of Public Laws 815 and 874. As a member of the subcommittee which deals with this legislation, and as the author of the last revision to it, I would hate to see anything dire in the way of cutbacks or elimination of these very worthwhile laws.

After considerable study and soulsearching on this subject I am convinced of several things, the first and most important of which is to say that in my estimation, adoption of the title as written will by no means cause the defeat of the these laws.

There are more than 3,000 school districts which benefit from Public Laws 815 and 874. Take, if you please, the number of them which could be affected by closing schools in those States which resist integrating their schools. If that few can act as the tail which will wag the dog then indeed their actions might be fatal. The fact is that some of us, including myself, in the recent committee consideration of H.R. 10128, the school construction bill recently reported out, voted against a segregation amendment on the ground that legislation is not necessary for self-enacting clauses of the U.S. Constitution. We felt, and I felt in particular, that the proper place, notwithstanding any jurisdictional arguments, for the protection of a particular class of schoolchildren, belongs in a civil rights bill rather than in an education bill.

Here is a case where there are the children of constituents of all of us likely to be going to school in any particular impacted area, the children of the service people from each and every congressional district. In the case of the city of Norfolk which in the recent past closed its schools in resistance to a court order, some 300 military children were attending a base school and were not affected. They attended a base school. Some 3,000, if you please, were not. They were transients, sons and daughters of military personnel who had no active part in the feelings engendered in that particular section of the country by the Supreme Court's integration decisions. I do not propose to discuss the merits of them; I believe in them. The children of military personnel were deprived for more than 3 months of the education to which they were entitled because their schools were closed.

The theory of the impacted areas laws is that the Federal Government has no equity; the moneys go to the school districts to replace tax ratables lost by the presence of the military establishment, or something of that nature. But in the case of category A children whose parents reside on the military establishment, there is a particular problem. The last revision of Public Laws 815 and 874 made permanent the assistance to them.

I rather think that there is as much danger of the elimination of Public Laws 815 and 874 by the adoption of this amendment and striking this title as there is in the opposite situation.

Mr. BALDWIN. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON of New Jersey. I yield.

Mr. BALDWIN. I should like to ask one question. On page 9 there is section 502(H) that would be stricken. As I understand it, every school district in the United States that makes application for construction funds under Public Law 815 would have to sign an agreement to turn over that school to the Federal Government in the event the school might be closed. This would apply to all States in which there are no segregated schools at the present time. But can the gentleman assure us that all 50 States today would have authority to sign these agreements? If they do not have authority, then they would be barred from receiving funds under Public Law 815 even if they do not have any segregated schools.

Mr. THOMPSON of New Jersey. Obviously the gentleman is not in a position to relate here off the top of his head, the law of 50 States. I believe title V to be sound and workable, and will not be destructive of the program. I am opposed to the amendment of the gentleman from North Carolina.

Mr. CRAMER. Mr. Chairman, I offer a substitute for the amendment offered by the gentleman from North Carolina [Mr. BARDEN].

The Clerk read as follows:

Amendment offered by Mr. CRAMER as a substitute for the amendment offered by Mr. BARDEN: On page 9, line 11, strike out "6(1)(1)" and insert in lieu thereof "10",

On page 9, line 13, strike out "relating to applications for school construction" and all that follows through "Act," in line 24, on page 9.

On page 10, line 14, strike out "(c)" and insert in lieu thereof "(b)".

On page 10, strike out line 23 and all that follows through line 7 on page 12 and insert the following: "education, and if it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide such free public education; and

"(2) such facilities are needed in the provision of minimum facilities under subsection (a), he shall notify such agencies of such determination and shall thereupon have authority to secure possession and use such facilities for the purposes of subsection (a) pursuant to an agreement between such agencies and the Commissioner which includes such terms and conditions as the Commissioner may determine to be necessary to carry out the provisions of this section."

Mr. CRAMER. Mr. Chairman, I ask unanimous consent to proceed for 5 additional minutes.

Mr. BOW. I object, Mr. Chairman.

Mr. CRAMER. Mr. Chairman, I will do my best to explain this substitute in the brief time allotted. It is with considerable trepidation that I offer it as a substitute to an amendment by the distinguished chairman of the Education and Labor Committee, but I suggest that when I offer the substitute to the amendment offered by the distinguished chairman of the Committee on Education and Labor I can only assure the distinguished gentleman it is done in a cooperative fashion and in hope the amendment as perfected by my substitute will be adopted.

The basic difference between the substitute I offer and the amendment offered by the gentleman from North Carolina is consistent with the question I asked when he had the floor. It permits the Commissioner to enter into agreements with the superintendent of public instruction in the local community as not a mandatory matter but a discretionary matter. It spells out clearly that the Commissioner has authority to negotiate with the superintendent of public instruction for the use of such schools as may be closed within the statutory authority of that superintendent of public instruction to permit such usage or his desire to permit such usage.

So what it does is in a discretionary fashion to permit the Commissioner of Education to negotiate with the local superintendent of public instruction, authorizing the Commissioner to enter into such negotiation to make use of these schools that in the future receive funds for their construction under Public Law 815.

The other thing it does, which is included in the amendment offered by the

gentleman from North Carolina and rightly so, if you will refer to page 23 of the committee report, you will see that it eliminates that subsection (H) to which the gentleman from California [Mr. BALDWIN] referred, about which the gentleman from North Carolina [Mr. BARDEN] rightly is most concerned, and about which I suggest respectfully, Mr. Chairman, every Member of this House of necessity must concern himself if he has a Public Law 815 school construction problem in his district, and that is simply this.

It is my opinion, and I have spent a considerable amount of time in the consideration of this particular substitute in consultation with the legislative drafting service in order to attempt to perfect it—it is my opinion if the subsection H requirement is not stricken out of this bill, which appears on page 9 requiring an assurance from the State or local superintendent of public instruction that in order to get Federal funds in the future as a condition of getting those funds prior to the construction of the building that under Public Law 815 he will turn that school over, which implies he has the authority to do it—turn that school over to the Commissioner who mandatorily has the duty to take such a school over that no such State authority could execute such an agreement and thus Public Law 815 would be destroyed. Under the provisions of the act, which I have stricken out and which the gentleman from North Carolina would also strike out, the return provisions on page 11—and I want to call your attention to these return provisions, the return of that school under the present bill is solely in the discretion of the Commissioner. If the local school superintendent wants a return of the schools and the law no longer requires him to close them or the Federal court decision if one has been rendered does not require him to continue to close them, he asks for the schools back. There is no requirement that the Commissioner return them except subject to numerous conditions. Let me show you how nebulous these conditions are. On page 11 I read, "if the commitment is made to the personnel employed in connection with the operation of such facilities pursuant to the arrangements of the Commissioner"—if those personnel agreements have not been fully carried out, that can be a condition for the Commissioner to refuse even a request of the superintendent of public instruction of the community involved to return the school, and when he has authority under the State law to regain the possession of those facilities and in carrying out his authority, he cannot regain them under the provisions of this section until there is a finding by the Commissioner that the personnel commitments made by the Commissioner have been carried out.

I suggest, Mr. Chairman, that the gentleman from North Carolina was probably going to ask, and I do not pretend to read his mind but based on the statement he made on the floor, as to whether or not the Commissioner today would have such discretionary authority. It is my opinion, Mr. Chairman, even if that were the case, this amendment certainly would do no harm but instead would spell out very clearly, because in this subsection we are dealing strictly with a situation where the superintendent of public instruction or the State closed the schools under the authority of State law, and it was spelled out clearly under those circumstances there would be discretion in the superintendent of public instruction then to lease those properties or to make them available to the Commissioner of Education. Spelling this out can only clarify present law as it applies to school closing situations and cannot possibly be objectionable to those who object to this provision in the proposed bill.

Let me stress again, Mr. Chairman, and I cannot stress it too strongly because I do not think anyone should have any reservation or any question about it, and if anybody disagrees with me, I wish they would say so—that under the provision required on page 9, as to the assurance the local superintendent must give as a condition precedent to getting Federal funds for school construction, there is not a superintendent in the United States of America that could enter into such an agreement. Thus, without this substitute, Public Law 815 would be destroyed and I urge the adoption of the substitute.

The substitute also requires the Commissioner to make a further finding before negotiating for the use of closed schools that other schools remaining open and providing free public education satisfactory to the Commissioner are not available for use by military children which is a condition I think should obviously come into play before closed schools should be made available.

Mr. CELLER. Mr. Chairman, I ask unanimous consent that all debate on the so-called Barden amendment and the Cramer substitute, and all amendments thereto, close in 30 minutes.

The CHAIRMAN. The gentleman from New York asks unanimous consent that all debate on the pending amendment and the substitute end in 30 minutes.

Is there objection?

There was no objection.

The CHAIRMAN. The gentleman from Florida [Mr. MATTHEWS] is recognized.

Mr. WOLF. Mr. Chairman, I ask unanimous consent that the gentleman from Mississippi [Mr. WINSTEAD], the gentleman from North Carolina [Mr. WHITENER], the gentleman from Texas [Mr. DOWDY], the gentleman from Ohio [Mr. HAYS] and I may yield our time to the gentleman from Florida [Mr. MATTHEWS].

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. MATTHEWS. Mr. Chairman, I am very grateful to my colleagues for permitting me this extra time to debate this very important measure.

I realize, Mr. Chairman, that the members of the Committee on the Judiciary are much more able to discuss some of the legal aspects on this measure than I. I also defer to the distinguished gentleman from North Carolina [Mr. BARDEN] in his superior knowledge about the contents of title V as it relates to education. But since my background in civilian life has been in the field of education, I feel it is vitally important for me to express, as many of you have, my tremendous concern in this title V concerning education in this so-called voting rights bill today.

Mr. HAYS. Mr. Chairman, will the gentleman yield?

Mr. MATTHEWS. I yield to the gentleman from Ohio.

Mr. HAYS. The gentleman says his background in civilian life has been education. Does he consider this the frontline?

Mr. MATTHEWS. I think I would be inclined to agree with the gentleman, if I understood exactly what he had in mind.

Mr. Chairman, those of us who come from the Deep South have had to resist so-called civil rights legislation because of our conviction and because of matters such as this title V. People of the United States think that this particular bill is a voting rights bill. Many of my colleagues from time to time have suggested to me that this voting rights bill is not a bad bill. I have heard eloquent pleas made on the floor about voting rights. I have said in my previously prepared statement about this bill that I felt every qualified American citizen should have the right to vote. But in this bill we have an entirely new section dealing with education. By the amendment that we passed concerning the so-called guarantee of voting rights, we have abdicated to the Attorney General the rights of judges, and now we want to abdicate to the Commissioner of Education the right to establish new Federal facilities of education, a right he has never had before. As the gentleman from North Carolina [Mr. BARDEN] explained to you, at the present time the Commissioner of Education has a right to provide for education for members of the Armed Forces residing on Federal property, and he cooperates with the local agencies in giving that education and in giving education to those who do not live on Federal property, but who live in the adjacent community. Cooperation has been the key word. There has been cooperation between the local agency and the Commissioner of Education, but now in title V you say nothing at all about cooperation under certain circumstances, but you say that the Commissioner of Education will be the sole arbiter, the sole judge. He will make the sole decision on when he will take over these school facilities. He will be the sole arbiter insofar as what is taught is concerned.

Can you imagine a local school agency that is not given an element of cooperation in the matter of giving up school facilities, being willing to cooperate insofar as text work is concerned, subject matter, the availability of teachers, such matters as accreditation? Mr. Chairman, you will have a Commissioner of Education building new buildings in our States solely for education. Who will be

the accrediting agency for these particular schools?

Mr. DIXON. Mr. Chairman, will the gentleman yield?

Mr. MATTHEWS. I yield to the distinguished gentleman from Utah who in his own right has had much experience in the field of education.

Mr. DIXON. I very much concur in what the gentleman from Florida has been saying. This bill would require a superintendent of schools to enter into a contract that he would deliver over that school to the Commissioner of Education in the event the school was closed In practically every instance that I know of it would violate the constitution of the State for a superintendent to enter into a contract or to make such a covenant. It that not correct?

Mr. MATTHEWS. The gentleman is absolutely correct; and I may say the gentleman has been president of a great university. I want to thank him for bringing to us his information about this particular measure.

Mr. DIXON. Mr. Chairman, will the gentleman yield further?

Mr. MATTHEWS. I yield.

Mr. DIXON. What I said in my previous question being the case, then this bill would preclude practically every State, in my opinion, from accepting Public Law 815 or Public Law 847 funds, because the superintendent would have no right to enter into such an agreement.

Mr. MATTHEWS. The gentleman is absolutely correct.

Mr. Chairman, let me point out to those of you who in other sections of the country are not worried at the moment, that if this title is included in the bill, wherever you are, your superintendent of public instruction or your local school agency has to yield to the Federal Government and let them come in any time they want to come in to operate schools. I think this would be one of the most terrible things that could happen in the field of education.

Mr. WHITENER. Mr. Chairman, will the gentleman yield?

Mr. MATTHEWS. I yield to the gentleman from North Carolina.

Mr. WHITENER. I would like to ask the gentleman if it is not his opinion that the language on page 10, "(b) Whenever the Commissioner determines that (1) any school facilities with respect to which payments were made under section 7 of this act, pursuant to an application approved under section 6 after the enactment of this subsection, are not being used by a local educational agency for the provision of free public education" does not go far and beyond the question of racial problems in the schools and could it not be extended to say that the Commissioner of Education could override and practically veto consolidation movements in a particular community, or might even during the summer vacation period arbitrarily take over the buildings of the local community where a greater part of the expense has been borne by the local taxpayers?

Mr. MATTHEWS. The gentleman is absolutely right, in my opinion.

Mr. JONAS. Mr. Chairman, will the gentleman yield?

Mr. MATTHEWS. I yield to the gentleman from North Carolina.

Mr. JONAS. The gentleman is making a very able argument, and I should like the RECORD to show that I agree with his remarks and associate myself with them. May I ask the gentleman when he speaks of Federal interference in local educational systems, can he imagine a more complete control over educational systems than this title would give the Federal Government?

Mr. MATTHEWS. I can imagine no control that would be more dictatorial and supreme.

Mr. Chairman, how much time do I have left, please?

The CHAIRMAN. The gentleman has approximately 4 minutes remaining.

Mr. MATTHEWS. I am delighted to yield first to the gentleman from Texas, Mr. DOWDY, and then I will yield to my colleague from Florida, Mr. BENNETT.

Mr. DOWDY. The gentleman expresses a conviction along the line that the Commissioner could come in during school vacations and take over school buildings for use and then, under the provisions at the bottom of page 11 and the top of page 12 of the bill, he does not have to return such buildings to the local authority until he gets ready to, or in his judgment wants to.

Mr. MATTHEWS. The gentleman is absolutely correct. He can keep them for years and years if he wanted to.

Mr. DOWDY. Even taking them over during summer vacation.

Mr. MATTHEWS. Absolutely.

Mr. Chairman, I now yield to my distinguished colleague the gentleman from Florida [Mr. BENNETT].

Mr. BENNETT of Florida. I congratulate my colleague for his stand in this matter, and should like to extend my remarks at the end of the gentleman's statement, and make that consent request, Mr. Chairman.

The CHAIRMAN. Without objection it is so ordered.

There was no objection.

Mr. ALFORD. Mr. Chairman, will the gentleman yield?

Mr. MATTHEWS. I yield.

Mr. ALFORD. In this matter the gentleman referred to we are dealing with something completely outside of and beyond civil rights, and are placing tremendous authority over schools in the hands of the Commissioner.

Mr. MATTHEWS. The gentleman is absolutely right. We are going far beyond the idea of voting rights that the American people think we are talking about. We are giving the Commissioner the right, if he wants to take it, to write textbooks.

Let me give you a problem we have with music literature. Down in my section of the country we believe in using musical literature as it was actually written by the author. The House will recall that a couple of years ago I told you that in a certain section of the country, or in certain sections of the country, they were changing the words of "Swanee River." That is the Florida State song. In the course of the song, "Swanee River," by Stephen Foster, it goes like this: "Oh, darkies, how my heart grows weary." But here in Washington they say "Oh, brothers, how my heart grows weary," or "Dear ones, how my heart grows weary."

Here in the public schools of the District of Columbia they are not permitted to sing the State song of Virginia, a great song which was composed by a Negro. Certain words in "My Old Kentucky Home" have been censored.

We may laugh about that, we say that is not important, but it is an example of censorship caused by minority group pressure. I fear that the Commissioner of Education will be influenced by the pressure. I do not want to give the Commissioner of Education the right to give us the textbooks that he might want to give, as well as the right to prescribe the text and the right to tell you who is going to teach. What kind of teachers will the Commissioner of Education give us? Just how will he prescribe the qualifications?

Mr. Chairman, this is a title that should not be in this bill. I know that some of you honestly disagree with me, but I plead with you, no matter what you think about the other portions of the bill, do not approve title V. I am going to vote for the amendments because they improve title V.

Time and again we have warned you on the floor of the House that whenever you have one overwhelming authority in charge of education in this country, tyranny is inevitable. I am worried about this trend toward Federal control.

Mr. WIER. Mr. Chairman, will the gentleman yield?

Mr. MATTHEWS. I yield to the gentleman from Minnesota.

Mr. WIER. Let me ask my beloved colleague something that ought to be made clear, and I do love the gentleman. He is one of the finest fellows I have ever met.

Mr. MATTHEWS. I want to reciprocate in that thought.

Mr. Chairman, this title ought to be eliminated.

Mr. BENNETT of Florida. Mr. Chairman, I wish to associate myself with the line of thinking of the able gentleman from Florida [Mr. MATTHEWS] on this amendment. Before I say a word or two on the legislation itself, I take this opportunity to pay tribute to the beloved gentleman from Florida [Mr. MATTHEWS]. I do not know of any Member of Congress who is more beloved by his colleagues than he. With love of his fellow man the dominant characteristic of his life, he inspires us with his high devotion to his God and country and stirs our spirits with a warm humor seldom found even among professional humorists. His achievements in legislation are impressive but above all else, we admire him for his extraordinary gift of friendship.

Now I would like to address myself to a few remarks on the schooling parts of this bill. The hard insistence of the extremists of this House to impose their wills on all sections of the country has never been more apparent than in the fight they are making by this bill to take

over the schools of our country. Those of you who have felt that education of our youth comes first in their thinking must have a rude awakening when you look at their position on this issue. I urge that the rest of us stand together and adopt these amendments offered by the gentleman from Florida [Mr. CRAMER], and the gentleman from North Carolina [Mr. BARDEN] and thus preserve to our local school authorities the necessary and proper control of our schools.

The CHAIRMAN. The time of the gentleman from Florida has expired.

The Chair recognizes the gentleman from South Carolina [Mr. RIVERS].

Mr. RIVERS of South Carolina. Mr. Chairman, I do not expect that anything I shall say will have the slightest effect on the membership of the committee or the House or on your sense of right or wrong.

This Celler proposal will destroy every school in the southern part of this country. That is what the author of the original amendment, the gentleman from New York [Mr. CELLER], has designed that it do. I am not going to swing my arms around here but I just want to say that you are going downhill today. Everything is going your way now—but what about tomorrow or November or next year—or ever?

Mr. WIER. Mr. Chairman, will the gentleman yield?

Mr. RIVERS of South Carolina. I yield to the gentleman from Minnesota.

Mr. WIER. I think the gentleman is a man who is well located at Charleston, S.C., to answer the question that I seek to ask because he is the Representative of a district that could be very deeply affected by this action.

Mr. RIVERS of South Carolina. Both of us.

Mr. WIER. I would not expect the gentleman to say this amendment would affect every district in the United States. This originated, I think, with the military. They, the armed services, have children of their personnel who are out of school; it might be in Charleston, it might be in Norfolk, or it might be in some other place, where military bases are new at hand. Now, you subscribe I hope to the idea that the school ought to be kept open where a number of schools are now closed. Should the Commissioner of Education step into the picture then and open a school for these children of the personnel on the base? Is that correct? And, would you not subscribe to the fact that the school ought to be open?

Mr. RIVERS of South Carolina. Let me say this. This thing is designed to destroy our school system. Let me tell you this: We are not going to forget this; we are not going to forget this today, and we are not going to forget this on election day, and we are not going to ever forget it. When the time comes that we can pay back in kind to those who are doing this to us, we plan to do just that. That is all I have to say. Every dog has his day—tomorrow will be mine.

The CHAIRMAN. The Chair recognizes the gentleman from New York [Mr. GOODELL].

Mr. GOODELL. Mr. Chairman, I rise in opposition to this entire title. I consider myself a civil rights advocate, and I have fought against every crippling amendment that has been offered here and every obfuscating amendment that has been offered in the last few days. But, this, it seems to me, is entirely wrong, to legislate in a field such as this, and we might place in jeopardy our entire Public Law 815 by doing so. If we have a Committee on Education and Labor, that is the place that should properly consider the provisions of this title V. I have asked over here and find that there is no testimony whatsoever in the RECORD with reference to the ability of the States to comply with the provisions that are set up in this title. This is not talking about just the Southern States; it is talking about the States in the entire country. And, I make reference to page 9, to the assurance that a State agency must make as to the school facilities. It is quite possible and, as a matter of fact, likely that many States will not, under their constitution and laws, be able to comply with this provision, and thus we will insidiously be undermining the entire Public Law 815. I would speak further against the provision of the Commissioner's determination which is provided in subsection (b) of section (C) that on the determination of the Commissioner that the school facilities are not available in the local agency, he shall notify the agency and he shall thereupon be entitled to take possession of such facilities. When we are talking about Federal aid to education—and some people are saying there is not going to be any Federal control—but when we talk about Federal aid to education, what is this right here if it is not an example of the kind of Federal control that is going to be used in every Federal aid program to education? And, you people are doing a very good demonstration of it in advance and doing it in a very improper sense, by sending it to a committee where these things cannot be ironed out.

Mr. WHITENER. Mr. Chairman, will the gentleman yield?

Mr. GOODELL. I yield to the gentleman from North Carolina.

Mr. WHITENER. Does the gentleman agree that this title by the very language is in no way confined to the question of civil rights and goes way out and beyond that and gives potential dictatorial power to the Commissioner of Education to take over the schools?

Mr. GOODELL. I think the ramifications of this title have not been explored properly.

The CHAIRMAN. The time of the gentleman from New York has expired.

The Chair recognizes the gentleman from Oklahoma [Mr. EDMONDSON].

Mr. EDMONDSON. Mr. Chairman, this is the first word I have had to say in this debate so far. Like the gentleman from New Jersey who spoke a little bit ago, I say these words only after a great deal of soul searching and a great deal of thinking, prayerfully, over the impact of this particular language. I cannot believe in my heart that the language which provides for seizure of school buildings, with the man doing the seizing the sole arbiter of what he pays for it, is really essential to the objectives of this bill. And, I do not know of another instance in the Federal law in which the official who is given the power to seize is the only one who determines what he is going to pay for it. But, that is what is in this language.

I cannot conceive that to be essential to the objectives of this legislation. I earnestly hope that we can have a good piece of civil rights legislation which we can live with and which will do the job it is intended to do, without endangering other worthwhile programs.

In Oklahoma we do not have the problem that some other States have with regard to integration. We are embarked peacefully upon integration. There is no danger that I know of that we in Oklahoma will face this particular situation, under which public schools are shut down, but there is a great danger in Oklahoma that a lot of people who are for Federal aid to education will revolt against the program of Federal aid to education if they think that we are writing into it provisions for seizure by the Federal Government of the school buildings themselves. That is what is at issue here.

My good friend from New Jersey, whom I respect highly, said that no one is talking about control of curriculum or control of teachers. Is any control more essential than control of the very facilities in which the schools are conducted? If you have the power to control and seize the facilities, what difference does it make whether you control on the question of curriculum and teachers?

I sincerely hope that either the Barden amendment or the Cramer substitute will be adopted and that this bill may pass without doing violence to a great cause. That is the cause of Federal aid to education.

The CHAIRMAN. The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Chairman, I would like to put these amendments in perspective. I, too, am a member of the subcommittee that handles this particular legislation.

There is something interesting that has happened here today. I have favored, since I came to Congress, what I call constructive action by the Federal Government in working out desegregation problems of our communities. This bill adopts outright a plan to tackle one phase of this problem, and I commend my colleagues for recognizing the worth of this plan. Certainly where schools are closed there is a responsibility of the Federal Government to what I call the "Federal kids"—the children of Armed Forces personnel who are involuntarily assigned to a particular city. We have given the Commissioner the money and the authority to set up temporary schools for these children if their schools are closed. None of the amendments is directed toward this vital core of the program. I believe this is a positive, constructive step which we can all take a pride in.

The pending amendments only touch one feature of the program—the availability of local classrooms. One can talk about "seizure" but I do not think the adoption of this title will disturb the program or threaten its future. We simply say—and frankly, if I were to draw the language I would frame it somewhat differently—we simply say to a school district, "When Federal construction funds are given, will you give us assurance that you will rent the buildings if your community temporarily shuts down the schools?"

That is what is involved. It is a very simple and narrow question. There is no "seizure" involved. It is merely an agreement to rent, an agreement to lease. This is not spelled out as clearly as I would like to see it, but as a practical matter, if we give the Commissioner of Education the authority to set up temporary schools for the children of Armed Forces personnel, I see no reason why local school officials would not readily say: "If you want to conduct a temporary school go ahead and use our buildings."

I do not think there is anything onerous about such a condition. But if school buildings are not immediately available the Commissioner would have to rent a warehouse or a church and improvise desks and it would be difficult to expeditiously set up a school for the Federal kids. So let us keep our eye on the issue at stake here. I think both amendments are ill advised.

The CHAIRMAN. The Chair recognizes the gentleman from Alabama [Mr. ELLIOTT].

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. ELLIOTT. I yield to my colleague.

Mr. ROBERTS. Mr. Chairman, I do not know of anyone in this House who has done more for education than the gentleman now in the well of this House. I hope the House will give him its attention.

Mr. ELLIOTT. I thank the gentleman for his kindness. He and I have worked together to build a better school system.

Mr. ROBERTS. Mr. Chairman, I ask unanimous consent to extend my remarks following the remarks of the gentleman from Alabama [Mr. ELLIOTT].

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. ELLIOTT. Mr. Chairman, this program of aid to schools that we are talking about this afternoon has, I think, been one of the most remarkable and outstanding programs in the field of education ever devised by the Congress.

The program has operated in all our 50 States with approximately 4,000 school districts each year receiving assistance under Public Law 874, and about 350 school districts annually receiving assistance under Public Law 815.

In my own State of Alabama, 54 school systems have received aid under these programs amounting to more than $32 million.

It was carefully written in the first place. Many of us know about that. It has been carefully reviewed every year or two by the House Committee on Education and Labor. It is a complicated program. The two laws themselves are technical and complicated. They are delicately balanced. Every Member of this House who is familiar in any way with this program knows that to be true.

Let me say to my friends that many of us have fought day in and day out around the Congress of the United States here for years to provide an educational system for America that will be constantly growing better as our Nation grows, but we have fought at the same time to keep Federal control out of this program. Mr. Chairman, this is the first direct example of an effort to bring in some Federal control we have seen that in these years in which we have been dealing with the question. I plead with my colleagues on the right and I plead with my colleagues on the left, let us not endanger a law under which we have spent over $1 billion building better schools and providing better maintenance and operation. Let us not destroy that law. Let us not take a provision written into this bill by a committee that is not charged with the legislative responsibility in this field. Let us adopt the Cramer and Barden amendments.

Mr. Chairman, this is not a sectional appeal. The school districts that receive aid under these laws are located in every State in America. This is not a political appeal, because I am one of those who feels that politics has no place in education.

Public Laws 815 and 874 were designed to benefit our Nation. They were not designed to promote economic or social theories. They were not designed to be used by a majority to chastise a minority.

Amendments to these laws should not be considered at that level of thought. They should be considered at the level of what is best for America and her school system.

Mr. ROBERTS. Mr. Chairman, in a statement earlier in the debate on H.R. 8601, the so-called civil rights bill, I pointed out some of the fallacies I believe this bill contains.

I attempted to show that this measure certainly is not just a voting rights bill, as some would have the American public believe, but is an ill-conceived force bill to invoke total racial integration while providing no citizen any new right or privilege.

One of the most misleading sections of the bill is title V, which would amend Public Laws 815 and 874 as amended, relating to the education of children of members of the Armed Forces.

Even without consideration of the manifold demerits of this title, it should be clear on simple jurisdictional grounds that this title is misplaced in this legislation. It is a Federal aid to education provision which clearly is the type of legislation which should have been considered by the Committee on Education and Labor. The provision is not relevant to the overall bill's purpose.

Beyond this consideration, there is urgent call to reject title V because of the alarming threat it poses to the educational process in this country.

Where under present law the Commissioner of Education has authority to provide free public education for children residing on Federal property if the State and its subdivisions do not provide such education, this bill would extend that authority to children of all active Armed Forces personnel, whether or not they are living on Federal property.

Where under present law, the Commissioner in such an event must make arrangements for educating the federally connected children only with a local educational agency or with the Federal agency having jurisdiction over the property where they live, this new bill would allow the Commissioner to make arrangements with the head of the Federal department having jurisdiction over the parents of the children involved.

These two provisions alone hold alarming forebodings of the great and shocking concentration of power which would be that of the Commissioner of Education under this title. But this is only a small part of it. The amendments to Public Law 815, the construction program, take even more distressing turns.

These amendments would make the Commissioner of Education a mighty commissar of Federal education, empowered to seize whole school systems, to grant or withhold funds, hire teachers, and, in many conceivable ways control young minds in accordance with the terms and conditions which the commissar himself prescribes.

Look at section 502. This authorizes the Commissioner to seize any school building constructed in the future with Federal aid when the building is not being used by the local authorities and when the Commissioner decides he needs the building to educate children of military personnel. It also will require that in the future any local or State agency which is entitled to Federal assistance must assure the Commissioner that he can have the building when he wants and needs it, under the terms of this provision.

This type of legislation can have no beneficial effect on the programs administered under Public Laws 815 and 874. It will completely wreck the program in several States, including some in the South.

I have personal knowledge of the great benefit these programs have on educational systems in this country. It would be an injustice to shackle these programs as this bill proposes, and to undo the time and efforts of the outstanding Committee on Education and Labor which has produced this workable and worthwhile program.

In Alabama, about half the school systems are affected by this program. I can truthfully state that it would have been impossible for the public schools in these areas where there are Federal installations to operate with the burdens which have been placed upon them by the addition of the federally connected students.

In the Fourth Congressional District, which I serve, more than $5 million in

Federal funds has gone to schools in federally affected areas during the past 8 years. These include schools in the county systems of Autauga, Elmore, Clay, Dallas, St. Clair, Talladega, and Calhoun; and the city systems of Anniston, Talladega, Sylacauga, Selma, Piedmont, and Jacksonville.

This program is worth while; the need is valid. I want to commend the members of the Committee on Education and Labor who have through the years worked so diligently to perfect this program. Particularly, of course, I would pay tribute to my fellow Alabamian on this committee, Mr. ELLIOTT, who has done as much or more for education than any Member of the House.

I urge the protection of this program. I urge the adoption of the Cramer and Barden amendments.

The CHAIRMAN. The Chair recognizes the gentleman from New York [Mr. WAINWRIGHT].

Mr. WAINWRIGHT. Mr. Chairman, it is a distinct pleasure to follow my chairman, the chairman of the Subcommittee on Special Education, the gentleman from Alabama [Mr. ELLIOTT]. Unfortunately, I take opposite tack. It seems to me that every spokesman, every distinguished southerner who has spoken against the bill or for this amendment, is opposed because schooling in any shape or form raises a dreadful red flag.

What is the issue? The issue in this amendment, and the civil rights bill is not going to rise or fall with this amendment, is, Are we, the Federal Government, going to live up to our obligations under Public Laws 815 and 874? Are we going to live up to our obligation to federally impacted schoolchildren? Just that: Are we going to live up to that obligation? If we support this amendment, in those States, for example the State of Virginia has been cited, enacting laws closing schools, the Federal children will not be given an education. It is just as simple as that.

Mr. ROOSEVELT. Mr. Chairman, will the gentleman yield?

Mr. WAINWRIGHT. I yield to the gentleman from California.

Mr. ROOSEVELT. I wonder if the gentleman would allow me to ask the gentleman from Florida what would happen to the children in those schools which are shut down? Where would they go to school? That is what bothers me.

Mr. CRAMER. Mr. Chairman, if the gentleman will yield, under the present provisions of the act, my substitute does not strike it out nor does the amendment offered by the gentleman from North Carolina. Probably, you should direct the question to him since he is chairman of the committee which lives under the provision.

The CHAIRMAN. The time of the gentleman from New York has expired.

The Chair recognizes the gentleman from New York [Mr. LINDSAY].

Mr. ROOSEVELT. Mr. Chairman, will the gentleman from New York yield to the gentleman from Florida to complete that sentence?

Mr. LINDSAY. I yield to the gentleman from Florida.

Mr. CRAMER. The provision retained by both amendments which appears on page 9 and page 10 of H.R. 8601 and is presently designated as subsection (b) provides new authority to make available such education to all service children.

Mr. ROOSEVELT. Where would it be provided?

Mr. LINDSAY. Mr. Chairman, I do not yield further.

Mr. Chairman, I rise in opposition to the amendment, and also in opposition to the proposed substitute. The provision in the bill is designed to provide means of educating upward of 70,000 children of military personnel as was testified by the Secretary of Health, Education, and Welfare, Dr. Flemming. Without this proposed bill, this would be impossible. As to the proposed substitute propounded by the gentleman from Florida [Mr. CRAMER] the key in this whole amendment is the word "assurance." Unless such assurances are required and unless such assurances are given, the bill would have no meaning whatsoever.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. MCCULLOCH].

Mr. MCCULLOCH. Mr. Chairman, I rise in opposition both to the substitute and to the amendment. I want to associate myself with the statements of the able gentleman from Arizona [Mr. UDALL] as well as the able gentleman from New York [Mr. LINDSAY]. I would like to read to the committee a paragraph from the message of the President of the United States to the Congress on February 5, 1959, on this subject. I quote the President:

> I recommend legislation to authorize on a temporary basis provision for the education of children of members of the Armed Forces when State-administered public schools have been closed because of segregation decisions or orders. The Federal Government has a particular responsibility for the children of military personnel in federally affected areas since armed service personnel are located there under military orders rather than of their own free choice. Under the present law, the Commissioner of Education may provide for the education of children of military personnel only in the case of those who live on military reservations or other Federal property. The legislation I am recommending would remove this limitation.

Mr. Chairman, I know of no State which has in its statutory law or constitution a provision which would prohibit the school authorities from giving the assurances required in this bill. If there be any State which has a provision in its constitution or a provision of statutory law to that effect, I would be very happy to have any Member rise and make known to the Committee such provision.

The CHAIRMAN. The Chair recognizes the gentleman from Florida [Mr. CRAMER].

Mr. CRAMER. Mr. Chairman, let me again say I am wholeheartedly in sympathy with the fundamental objective of the admendment of the gentleman from North Carolina [Mr. BARDEN]. My amendment provides further, though, that the commissioner shall be given authority under this substitute, which I have proposed, to enter into an agreement with the local community school authorities if a school is closed to make use of such facilities if the local authority agrees to or has authority to agree to such usage. That is all it does. The "agreement" phrase of my substitute makes it discretionary rather than mandatory with the local authorities as to whether or not he can under State law or wishes under State authority to enter into such a proposal to use the closed schools for the education of these impacted military children. I do not think anybody could possibly object to that.

I would like the attention of the distinguished chairman of the Committee on Education and Labor, the gentleman from North Carolina [Mr. BARDEN], to respectfully point out the use of what I think is a fatal defect in his amendment which cannot be cured procedurally other than by the substitute.

The gentleman's amendment provides, on page 9—it strikes out all of line 11, and then it substitutes for "(b)" on line 74, "section 502," and I respectfully suggest to the gentleman that it would then read "section 502 of said act." But there is no reference to what act is being talked about or amended. There is no reference to Public Law 815. Therefore, my substitute corrects what I believe to be a vital defect in the gentleman's amendment that cannot be corrected at this time other than through this substitute. My substitute provides "section 502(a) section 10 of the act of September 23, 1950," relating to "Public Law 815" and so forth "is amended" and so forth. The gentleman's amendment does not contain a reference to Public Law 815. Unless the substitute is adopted, the situation procedurally cannot be corrected and even the objective of the gentleman's amendment with which I basically concur cannot be accomplished.

The CHAIRMAN. The time of the gentleman from Florida has expired.

Mr. MCSWEEN. Mr. Chairman, I rise in support of the Cramer substitute as well as in support of the Barden amendment to title V. I am particularly opposed to the provisions of title V, which would enable the U.S. commissioner to seize certain school buildings under certain conditions. The programs under Public Law 874–81 and Public Law 815–81 have proved to be successful, but certainly it should be clear that the enactment of title V would endanger and jeopardize this program, under which the Federal Government has financially assisted school districts that are federally impacted. It also points to the potential danger of the entire concept of Federal aid to education, because apparently there lurks in the minds of some persons the desire for the Federal Government to gain as much authority and power as possible over education in America, whenever the opportunity presents itself. I am violently opposed to any centralization of power in the hands of the Federal Government and most particularly do I oppose this centralization in the field of education.

The U.S. Commissioner of Education should not be given this unrestricted

authority to take over schools owned by local school districts, even though there has been Federal financial assistance. This would establish a most dangerous precedent and constitute a radical departure and pattern for the U.S. Commissioner of Education. I do not want him having a thing to do with the schools in my district. I do not want him to lay a finger on them, even in the event those schools may be closed in the wisdom of the school board, the principal, the school superintendent, the State superintendent of education or the State legislature.

I trust that the substitute and the amendment to title V will be adopted.

Mrs. GREEN of Oregon. Mr. Chairman, I speak in opposition to the amendment of the gentleman from North Carolina, my distinguished chairman of the Committee on Education and Labor [Mr. BARDEN]. I have heard it said that education has no place in this civil rights bill. And when we are on an education bill, we hear it argued that civil rights has no place in an education bill. And the children, being denied educational opportunities, have no voice.

Title V of this bill, Mr. Chairman is—tragically—necessary. This title takes cognizance of the fact that several States have chosen to enact legislation making possible the closing down entirely of their public school systems, as an alternative to compliance with the Constitution of the United States. It provides that the Federal Government may, following the pattern of Public Law 815 and 874, make arrangements for the education of children of members of the armed services when that education has been made impossible in the public schools of the districts where such children and their parents reside. Assuming that some schools are closed down, and assuming that the politically influential people of these States are willing to sacrifice their own children's education rather than comply with the Constitution, there still remain the children of members of the armed services. The parents of these children are not involved in the politics of these States; they are not able to bring pressure to bear upon the local segregationist diehards, as are those citizens of these States who are allowed to vote. The military personnel have volunteered, or, in a few cases, have been chosen through selective service, to serve in the defense of their country. They have little choice in where they shall be stationed. If they do not like the idea of their children losing every opportunity for education, simply because local leaders want to defend the principle of segregation, they cannot—as the employees of many private firms can and have done—pack up and move out. These parents are there, willing or not, for as long as the Army or the Navy or the Air Force or the Marine Corps may need them.

Some 70,000 pupils, according to the estimates of the Department of Health, Education, and Welfare, may be deprived of an oportunity for public schooling, because their parents have been assigned to the areas in these four or five States where the public schools may be closed in defiance of the Supreme Court and the Constitution. Some 70,000 young Americans may lose their educational opportunities because they have become helpless pawns in a controversy in which they have no immediate and direct voice.

Section 502, to which the amendment of the gentleman from North Carolina is addressed, would leave this wise and necessary policy still on the books, but it would deny to the Commissioner of Education the power, proposed to be given him under the pending bill, to open the schools built with Federal funds, to provide facilities for the education of these youngsters.

Section 502 does not provide for any confiscatory measure, Mr. Chairman. Any State and local school district which is willing to abide by the Constitution and the orders of the Federal courts may, of course, never even become aware of the existence of title V. Only where there is an insistence that the principle of segregation is more important than the Constitution would this title come into play—and there, only to the extent that the school facilities involved have been built with Federal funds. Furthermore, Mr. Chairman, the Commissioner of Education is authorized to pay rent to the school district, in an amount equal to its share of the cost of building the school of which he takes possession. Finally, Mr. Chairman, the Commissioner will return the facilities to the local districts as soon as those districts demonstrate that they are ready and willing to undertake their responsibilities—responsibilities which they assumed in the first place when they accepted Federal aid under Public Laws 815 and 874. These school facilities were built because the local communities and the Federal Government agreed that the education of these children of members of the armed services was a joint responsibility. If the local communities choose to default on this responsibility, then, under title V, the Federal Government is willing to assume the full job. But I can find no trace of confiscation in a legislative proposal to the effect that a schoolhouse may be rented back by the Federal Government, in order that it may be used for the purpose for which the Federal Government originally agreed to help finance it.

The amendment of the gentleman from North Carolina would simply deprive the Commissioner of his authority to possess these schools. The amendment of the gentleman from Florida would leave it up to the local school authorities as to whether or not they would engage in negotiations for this purpose. This substitute, in all frankness, improves the original amendment somewhat. But not, I believe, enough. The segregation question is a highly emotional one. In some areas, persons are charged with the basest of crimes—treason and disloyalty—for even suggesting that segregation is wrong. I am by no means sure that very many local school authorities will be either allowed to negotiate, or willing to negotiate for the use of their schools by the Federal Government, if they have decided to close down their schools for the children of local citizens. In many localities, of course, while the local authorities would be willing to negotiate, they may find State authorities pressuring them, even forcing them, not to do so.

I appreciate the objective of the gentleman from Florida in offering his amendment, but I fear that it will be least meaningful precisely in those areas in which it is the most necessary.

Mr. Chairman, I think the question here is whether or not we choose to mean it when we say the Federal Government has a basic and unavoidable responsibility to those children whom the gentleman from Arizona [Mr. UDALL] has called "Federal kids."

The CHAIRMAN. The gentleman from New York [Mr. CELLER] is recognized to close debate.

Mr. CELLER. Mr. Chairman, the provisions as originally written which are set up by amended sections to cover every contingency so that there would be absolute assurance that the children of military personnel could go to school. The situation arose in Norfolk where because of the closing of the public schols some 2,500 children were affected, and their parents were placed in a state of perturbation beyond question, because their children were without schools. Appeals were made to the Commissioner of Education, but he was powerless to cover all of those children who wanted to go to school. That is one of the reasons why we have this bill. It forfends against a repetition of that situation in Norfolk. Where there is an order of the court providing for desegregation, and the school is closed, the provisions of the title shall be applicable. It has been stated that even section 501, subsection 1, subdivision (d), title V, which is not covered by the amendment offered by the gentleman from North Carolina—it is said the Commissioner of Education would have the power to provide for schools. That is not quite accurate. He would not be able to go into areas where there are no public schools unless under very limited conditions. He has a right to rent facilities, but let us assume that the same acts that closed the schools would come into play and cause people not even to rent premises to the Commissioner of Education who wants to use those premises for providing educational facilities for the children of military personnel. What then? The children would have no schools and would have no education whatsoever.

The CHAIRMAN. The time of the gentleman from New York has expired.

The time of the gentleman from New York has expired; all time has expired.

The question is on the substitute offered by the gentleman from Florida to the amendment offered by the gentleman from North Carolina.

The question was taken, and on a division (demanded by Mr. CRAMER) there were—ayes 173, noes 86.

So the substitute amendment was agreed to.

The CHAIRMAN. The question recurs on the amendment offered by the gentleman from North Carolina as amended by the substitute offered by the gentleman from Florida.

The amendment as amended was agreed to.

Mr. CELLER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CELLER: After title 5 insert a new title as follows, and renumber the remaining titles and sections accordingly:

"TITLE ——

"Authorization to the Attorney General

"SEC. . (a) Whenever the Attorney General receives a signed complaint that any person or group of persons is being deprived of, or is being threatened with the loss of, the right to the equal protection of the laws by reason of race, color, religion, or national origin and whenever the Attorney General certifies that, in his judgment, such person or group of persons is unable for any reason to seek effective legal protection for the right to the equal protection of the laws, the Attorney General is authorized to institute for or in the name of the United States a civil action or other proceeding for preventive *relief*, including an application for an injunction or other order, against any individual or individuals who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or subdivision or instrumentality thereof, deprives or threatens to deprive such person or group of persons of the right to equal protection of the laws by reason of race, color, religion, or national origin and against any individual or individuals acting in concert with them.

"(b) A person or group of persons shall be deemed unable to seek effective legal protection for the right to the equal protection of the laws within the meaning of subsection (a) when such person or group of persons is financially unable to bear the expenses of the litigation, or when there is reason to believe that the institution of such litigation would jeopardize the employment or other economic activity of, or might result in physical harm or economic damage to, such person or group of persons or their families.

"SEC. . The Attorney General is authorized to institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for injunction or other order, (1) against any person or persons preventing or hindering, or threatening to prevent or hinder, or conspiring to prevent or hinder, any Federal, State, or local official from according any person or group of persons the right to the equal protection of the laws without regard to race, color, religion, or national origin, or (2) against any person or persons preventing or hindering, or threatening to prevent or hinder, or conspiring to prevent or hinder the execution of any court order protecting the right to the equal protection of the laws without regard to race, color, religion, or national origin.

"SEC. . The Attorney General is authorized, upon receipt of a signed complaint, to institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for injunction or other order, against any individual or individuals who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or subdivision or instrumentality thereof, deprives or threatens to deprive any person or group of persons or association of persons of any right guaranteed by the fourteenth amendment of the Constitution because such person or group of persons or association of persons has opposed or opposes the denial of the equal protection of the laws to others because of race, color, religion, or national origin.

"SEC. . The district courts of the United States shall have jurisdiction of proceedings instituted under sections ——, ——, and —— of this Act and shall exercise the same without regard to whether any administrative or other remedies that may be provided by law shall have been exhausted. In any proceeding hereunder, the United States shall be liable for costs the same as a private person.

"SEC. . Whenever a suit is brought in any district court of the United States seeking relief from the deprivation of the right of equal protection of the laws because of race, color, religion, or national origin, the Attorney General is authorized to intervene in such action with all the rights of a party thereto and to seek compliance with any lawful order issued by such district court.

"SEC. . Nothing in this Act shall be construed to impair any right guaranteed by the Constitution or laws of the United States or any remedies already existing for their protection or enforcement, nor to prevent any private individual or organization from acting to enforce or safeguard any constitutional right in any manner now permitted by law."

Mr. WILLIS (interrupting the reading of the amendment). Mr. Chairman, as we all know, this is old part III that we wrestled with and talked about so much earlier in the consideration of the bill. I ask unanimous consent that further reading of the amendment be dispensed with.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. WILLIS. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN. The gentleman will state the point of order.

Mr. WILLIS. Mr. Chairman, we have been told time and time again that the basic bill, H.R. 8601, deals with voting rights. We have been told that the voting referee proposal adopted later as amended pivots around the 15th amendment. The amendment now tendered by the gentleman from New York deals with something other than civil rights; no civil rights are mentioned in it.

The bill talks about deprivation of equal protection of the law under the 14th amendment. The two proposals are entirely unrelated and this proposal is not germane to the bill under consideration.

Mr. Chairman, I ask therefore that the point of order be sustained.

The CHAIRMAN. Does the gentleman from New York care to be heard?

Mr. CELLER. Yes, Mr. Chairman.

The germaneness of this amendment is established by the fact that the fundamental purpose of the bill is to provide remedies for the enforcement of constitutionally guaranteed rights. Each title of the bill relates to the enforcement of a constitutional right. The very purpose of the amendment here is to provide the Attorney General with authority to enforce the constitutional rights of individuals when they are incapable of doing so themselves. This amendment would include all constitutionally-guaranteed rights and, therefore, is consistent with the fundamental purpose of the bill. We have in the bill a number of individual propositions relating to the enforcement of constitutionally guaranteed rights and here we are merely adding another proposal whereby a remedy is provided to enforce constitutional rights. Therefore, it is in accordance with the rule of germaneness since it merely adds an additional proposal to individual propositions of the same class. The class here is the enforcement of constitutional rights. The remedy provided by the amendment would include all the individual remedies provided in the bill and in addition would encompass all the other rights guaranteed under the Constitution.

The precedents in support of the germaneness of this amendment can be found in Cannon's Precedents, volume VIII, sections 3010, 3011, and 3013. These sections support the general proposition that where a bill has several propositions of the same class an amendment adding another proposition of that class is germane. The point is that the bill provides various remedies to enforce constitutional rights. The remedies are the propositions, the class is the enforcement of constitutional rights. By this amendment we add another proposition, that is, another remedy but of the same class, namely, the enforcement of constitutional rights. The whole purpose of the amendment is to authorize the Attorney General to institute civil action to enforce rights guaranteed by the Constitution of the United States.

The CHAIRMAN (Mr. WALTER). The Chair is ready to rule.

At this point the Chair thinks it might be well to remind the gentleman from New York that this bill relates to Federal election records. The Chair has ruled that that involves the preparation and correction of the records themselves. The only constitutional right involved in the gentleman's bill is the right to vote. Certainly, the amendment offered by the gentleman from New York goes away beyond that constitutional right. True it is that there are sections in the bill relating to other matters, but the mere fact that these sections are in the bill in nowise authorizes the extension of the basic authority.

For the reasons stated, the Chair therefore sustains the point of order.

Mr. CELLER. Mr. Chairman, I ask unanimous consent to extend my remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. CELLER. Mr. Chairman, the first section authorizes civil preventive action for or in the name of the United States against those local or State officials and others acting under color of State law which deprives individuals or groups of persons of equal protection of the laws by reason of race, color, religion, or national origin. However, prior to initiating such a suit it would be necessary for the Attorney General to have received a signed complaint of such deprivation and then to have certified that in his judgment the aggrieved party or parties are unable to seek effective legal protection.

Under subsection (b), a person would be regarded as unable to seek protection when he is financially unable to bear the cost of such litigation or when he is threatened with reprisal if he institutes such a suit.

The second section authorizes the Attorney General to bring a civil action against any person or persons who attempt to prevent State or local officials from according any persons or group of persons the right to equal protection of the laws without regard to race, color, religion, or national origin or against any person or groups acting to hinder any court order protecting the right to the equal protection of the law regardless of race, color, religion, or national origin.

The third section authorizes the Attorney General upon a signed complaint to institute a civil action against any person or persons who, under color of any State or local law, deprives or threatens to deprive a person or persons or an association of persons of any right guaranteed by the 14th amendment because such person, group, or association opposed the denial of the equal protection of the laws to others because of race, color, religion or national origin.

The fourth section confers jurisdiction on the U.S. courts of proceedings instituted under sections 301, 302, and 303 without regard to the exhaustion of any administrative or other remedies. The United States is to be liable for costs in such actions the same as a private person.

The fifth section explicitly authorizes the Attorney General to intervene in cases brought by others for relief against the denial of equal protection of the law and for compliance with any lawful court order issued in such an action.

The sixth section is a preservation section to the effect that the act is not construed to impair any right guaranteed by the Constitution or laws of the United States nor to prevent any private person or group from acting to enforce any constitutional right in any manner now permitted by law.

Mr. LOSER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LOSER: Add a new section to title II on page 4 immediately following line 11, numbered section 203, as follows:

"TO PROHIBIT CERTAIN ACTS INVOLVING THE IMPORTATION, TRANSPORTATION, POSSESSION, OR USE OF EXPLOSIVES

"SEC. 203. That chapter 39 of title 18 of the United States Code is amended by adding at the end thereof the following new section:

"'§ 837. Explosives; illegal use or possession

"'(a) as used in this section—

"'"Commerce" means commerce between any State, territory, Commonwealth, District, or possession of the United States, and any place outside thereof; or between points within the same State, territory, or possession, or the District of Columbia, but through any place outside thereof; or within any territory, or possession of the United States, or the District of Columbia;

"'"Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds or mechanical mixture that contains any oxidizing and combustible units or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound or mixture or any part thereof may cause an explosion.

"'(b) Whoever transports or aids and abets another in transporting in interstate or foreign commerce any explosive, with the knowledge or intent that it will be used to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both; and if personal injury results shall be subject to imprisonment for not more than ten years, or a fine of not more than $10,000, or both; and if death results shall be subject to imprisonment for any term of years or for life, but the court may impose the death penalty if the jury so recommends.

"'(c) The possession of an explosive in such a manner as to evince an intent to use, or the use of, such explosive, to damage or destroy any building or other real or personal property used for educational, religious, charitable, residential, business, or civic objectives or to intimidate any person pursuing such objectives, creates rebuttable presumptions that the explosive was transported in interstate or foreign commerce or caused to be transported in interstate or foreign commerce by the person so possessing or using it, or by a person aiding or abetting the person so possessing or using it: *Provided, however,* That no person may be convicted under this section unless there is evidence independent of the presumptions that this section has been violated.

"'(d) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully imparts or conveys, or causes to be imparted or conveyed, any threat, or false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives, or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year or a fine of not more than $1,000, or both.

"'(e) The analysis of such chapter is amended by adding at the end thereof the following new item:

"'837. Explosives: illegal use or possession.

"'This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.'"

Mr. LOSER (interrupting the reading of the amendment). Mr. Chairman, I ask unanimous consent that the further reading of the amendment be dispensed with.

Mr. HALLECK. Mr. Chairman, reserving the right to object, has that amendment been printed at any place? Is it in printed form so that we can see it?

Mr. LOSER. I might say to the distinguished gentleman from Indiana that this is substantially the amendment that was adopted in the other body offered by the Senator from New York [Mr. KEATING] and it carries the technical amendments offered by the Senator from North Carolina [Mr. ERVIN] and that has been printed in the RECORD.

Mr. HALLECK. I withdraw my reservation of objection, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. LOSER. Mr. Chairman, this amendment is applicable to title II of the bill appearing on page 3 of H.R. 8601. I am sure you will recall that section 201 of title II refers to any person who moves in interstate commerce after having dynamited any building or structure or place used for religious or educational or business purposes, including residential purposes.

Now, the amendment goes one step further and provides that whoever transports or aids or abets in the transportation of explosives in interstate commerce with the knowledge or intent that it will be used to damage or destroy any of these buildings, it will become a Federal offense.

Now, we have in this amendment a rebuttable presumption and I would like to call attention to that so that the Members of the House, when they go to vote upon this amendment, will understand that the presumptions contained in the amendment are comparable to the presumptions found in the Lindbergh Act; that is, it provides that any person who transports or aids or abets in the transportation of dynamite interstate with the intent to damage or destroy any building, structure, or place shall be presumed to be the person who transported such explosive. And, I might say to the Members of the Committee that much of this activity on the part of irresponsible persons has been going on throughout the Nation.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. LOSER. I yield to the gentleman from New York.

Mr. CELLER. Do I understand, in the main, that in addition to removing and crossing State lines after a bombing, which under the bill as now written is a crime, your amendment also makes bombing itself a Federal crime?

Mr. LOSER. No, it does not, sir. It simply provides that a person transporting explosives interstate with the intent to damage or destroy any property, real or personal, shall be guilty of a Federal offense.

Mr. CELLER. I was just querying without expressing an opinion one way or the other. Do you think that authority rests in the Federal Government to establish such a crime?

Mr. LOSER. I have no doubt about it, Mr. Chairman. If there has been a dynamiting in one State of the Union and that person moves in interstate commerce, the commerce clause is the basis of the jurisdiction of the Congress in this field of legislation.

Mr. CELLER. Where would the culprit be tried under the gentleman's amendment?

Mr. LOSER. Under general law the jurisdiction would be in the judicial district in which the offense was committed.

Mr. CELLER. Would there be jurisdiction in the judicial district of the State to which the culprit has fled, likewise?

Mr. LOSER. There certainly would not be. There is a provision in the amendment that provides that the act shall not be construed as indicating an intent on the part of Congress to occupy the entire field. It negatives any idea of preemption.

Mr. CELLER. Then it would be more or less a purely Federal crime and the culprit could be tried either in the place where the dynamiting took place or in the place to which he fled?

Mr. LOSER. It does not provide for jurisdiction in a Federal court in the district to which he has fled. It provides for jurisdiction in the district where the offense was committed.

Mr. CRAMER. Mr. Chairman, will the gentleman yield?

Mr. LOSER. I yield to the distinguished gentleman from Florida.

Mr. CRAMER. Mr. Chairman, I congratulate the distinguished gentleman on his amendment and I rise in support of it. I introduced a similar bill and we had hearings on it before our subcommittee. The principal objection that was raised was that this creates a prima facie presumption that the explosives were carried in interstate commerce. I cannot understand the Attorney General objecting to a bill that calls for a prima facie presumption that it was transported in interstate commerce when he is willing to accept a conclusive presumption under the referee section.

I think the Committee should accept the amendment.

Mr. LOSER. I thank the distinguished gentleman from Florida.

Mr. EVINS. Mr. Chairman, will the gentleman yield?

Mr. LOSER. I yield to the distinguished gentleman from Tennessee.

Mr. EVINS. I, too, would like to congratulate the gentleman on offering this amendment. I think it is a salutary one. We have had bombings of Jewish synagogues in Atlanta, in Oak Ridge, schools in Nashville and other places throughout the country. I cannot see how anyone would oppose such an amendment and I hope that it will be adopted.

The CHAIRMAN. The time of the gentleman from Tennessee [Mr. LOSER] has expired.

Mr. COLMER. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Mississippi?

Mr. BOW. Mr. Chairman, reluctantly I have to object.

Mr. COLMER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I must confess, in rising to oppose this amendment, I do so because I am not clear in my mind just what the gentleman had in mind. That is why I asked unanimous consent that he proceed for some additional time.

So far as I am personally concerned I am opposed to the whole section, not because I am in favor of dynamiting; I abhor it as much as anybody else. But I am constitutionally and philosophically opposed to further centralization of the power in the Federal Government at the expense of the States. There is not a State in the Union that does not have a law against unlawful dynamiting of a building or any other public or private property, whether it be a church, or what not.

Mr. LOSER. Mr. Chairman, will the gentleman yield?

Mr. COLMER. I gladly yield to my very good friend. That is exactly why I tried to get the gentleman some additional time.

Mr. LOSER. Mr. Chairman, I have great admiration and respect for the distinguished gentleman from Mississippi and I subscribe wholeheartedly to most of his political philosophy. I have joined with him during these days in this debate on this so-called civil rights bill. I am opposed to centralization of power in the Federal Government. But it is agreed, I believe, by almost everyone that these terrible crimes that have taken place all over the Nation during the last 2 or 3 years did not originate in the State where the offense occurred; but gunmen and gangsters, goons, and hoodlums move across the face of this country tossing dynamite into the homes of innocent people, destroying synagogues, businesses, churches, and schools. I think, when such a situation arises, that it is a proper field for the intervention of our Federal Government.

Mr. COLMER. Now will the gentleman permit me to ask what his amendment does that is not provided in the bill here that he proposes to amend?

Mr. LOSER. I would say to the gentleman that title II of the bill reported by the committee makes it a Federal offense for a person to dynamite or attempt to dynamite a building or a structure or a place and thereafter move in interstate commerce.

Mr. COLMER. Before he starts to move in interstate commerce, are there not State statutes now to make it a crime to dynamite these same buildings?

Mr. LOSER. There certainly are.

Mr. COLMER. But the gentleman would go further and have the Federal Government come in, as the bill does, but the gentleman would go a step further, if I understood his original statement correctly, and make it prima facie that if he were in flight from one State to another he dynamited it for that purpose? Is that correct?

Mr. LOSER. That is substantially correct?

Mr. COLMER. May I say to the gentleman, because he has been very complimentary about me, that I certainly feel the same way about the gentleman. I am sure he knows it, because I find him basically sound in 99 percent of the cases, at least. However, I must say to the gentleman, much as I admire him, I cannot go along with that political philosophy because I just do not believe in further centralizing power in the hands of the Federal Government. I hope the gentleman will forgive me for differing with him.

Mr. LOSER. I am exceedingly sorry that the distinguished gentleman from Mississippi cannot go with me in this one direction. I have gone along with him right along on most of the things he advocates.

Mr. COLMER. The gentleman will find me with him generally. In fact he has made a splendid contribution in opposition to all other portions of the pending "civil wrongs" bill.

Mr. LOSER. I am sure we are generally in accord, but I hope he does not lead his other comrades to go with him.

Mr. COLMER. I am sure that I have thoroughly demonstrated that I cannot lead anyone on this issue.

Mr. CELLER. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. WALTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8601) to enforce constitutional rights, and for other purposes, had come to no resolution thereon.

URGENT NEED FOR HOUSING LEGISLATION

Mr. PORTER. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. PORTER. Mr. Speaker, this morning's Wall Street Journal reports that "the scarcity and high cost of mortgage money continue to curb housing demand."

Housing starts in February were down 8 percent from January and down 20 percent from February 1959 on the seasonally adjusted annual rate. New orders at west coast lumber mills, according to the Wall Street Journal, "have trailed productions for 9 of the past 10 weeks, and mills' inventories stand 21 percent above a year ago."

These facts are large handwriting on the wall not only for the lumber industry but for the whole immense and important housing industry.

The Raines bill, H.R. 10213, is designed to remedy the "scarcity and high cost of mortgage money" by making a billion dollars available for the FNMA special assistance program. This legislation was approved recently by a vote of 18 to 7 in the Banking and Currency Committee.

The bill is now before the Rules Committee. It is my hope that action there will be prompt and favorable.

LIBRARY SERVICES ACT

Mr. WOLF. Mr. Speaker, I ask unanimous consent to extend my remarks in the body of the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. WOLF. Mr. Speaker, yesterday I introduced H.R. 11295, a bill to amend the Library Services Act in order to extend for 5 years the authorization for appropriations.

The accomplishment of the first 3 years of this program is convincing proof of the need for its continuance. In spite of these accomplishments, Mr. Speaker, there are 900,000 people in Iowa who are without legal access to public libraries—some of them are as far as 30 to 50 miles from an adequate library. It is not difficult to understand what a traveling library means to these people.

The Iowa State Traveling Library has done a remarkable job in bringing library service to the local level in many areas of Iowa. It is continuing its efforts to: First, to secure sufficient funds to match in full the Federal funds available to Iowa; second, continue the intensive program to strengthen the quality of local library services by improving the book collections, extending the hours of opening, and so forth; and third, to improve the personnel serving local libraries by training workshops.

At this critical turning point in public library development in the State of Iowa, Mr. Speaker, it is incumbent that appropriate steps be taken to assure adequate financial support for the Iowa State Traveling Library to enable it to carry its full responsibilities to the needs of the citizens of the State. It is for this reason that I have introduced a bill to extend the authorization for appropriations under the Library Services Act for another 5 years.

This extension will permit the Iowa State Traveling Library to consolidate the gains which it has made and to develop similar cooperative programs in about one-half of the State still not reached.

In our efforts to develop leaders in the scientific race with the Communist world, who knows but that somewhere in the cornfields of Iowa there might be some young man stimulated by the services provided by the traveling library to become a great scientific leader in the tradition of Dr. Van Allen, of the State University of Iowa.

The text of my bill follows:

A BILL TO EXTEND THE LIBRARY SERVICES ACT FOR A PERIOD OF 5 YEARS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Library Services Act (20 U.S.C. 352) is amended by striking out "four" and inserting in lieu thereof "nine."

NATIONAL CONSTITUTIONAL CRISIS—SECOND SEQUEL

Mr. ALFORD. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. ALFORD. Mr. Speaker, in a statement to the House in the RECORD of March 14, I included an incisive legal analysis of the constitutional stand proposed for Virginia in the form of an editorial in the February 18, 1960, issue of the Pioche Record of Pioche, Nev., a well-known western weekly newspaper.

In a sequel in the RECORD of March 15, I quoted one of the Virginia measures, house joint resolution No. 44. Its purpose was restatement of the line of demarcation between the powers conferred upon the United States and those reserved to Virginia and her sister States.

A companion measure, house bill No. 407, aimed at stating the policy of Virginia with respect to autocratic assumption of authority on the part of members of the Supreme Court and their attempted application of usurped power to the law of Virginia.

In these two measures, introduced in the General Assembly of Virginia, we have the first technically and legally correct efforts to apply the law as provided in the Constitution to the menace that now threatens our liberty as a free and sovereign people. After hearings that were notable for the range of experience and stature of the authorities presented before the committee on Federal relations, both measures were reported out.

House joint resolution 44 passed the house of delegates and was referred to a committee in the State senate; house bill 407 was referred in the house.

In order that the provisions of house bill No. 407 may be available throughout the Nation and more widely understood, the text follows:

HOUSE BILL NO. 407

A bill to state the policy of the Commonwealth of Virginia with reference to the autocratic assumption of authority on the part of members of the Supreme Court and their attempted application of usurped power to the law of this State

Be it enacted by the General Assembly of Virginia:

That on April 15, 1783, under the terms of the treaty of peace at the end of the Revolutionary War it was acknowledged and confirmed that the Commonwealth of Virginia was a "free sovereign and independent" State. Thereafter, on June 26, 1788, the State of Virginia confirmed and ratified, together with other "free sovereign and independent" States, that certain compact and agreement known as the Constitution of the United States, under which there were constituted three separate and distinct agencies of government, each with clearly defined and strictly limited powers.

Each of the parties signatory to this agreement had its established form of government with executive and legislative branches, a full judicial system, as well as military and police power organizations together with the unlimited right of each to make and enforce its own laws.

Under article I of this agreement there were constituted the legislative, under article II the executive, and under article III the judicial, departments of government in which the limits of their authority were clearly defined.

All "legislative powers" therein "granted" were conferred upon the Congress. The power conferred upon the judicial department was limited to "judicial power" and all powers not delegated were expressly reserved to the States or to the people.

This limit to "judicial power" denied the United States Supreme Court any and all legislative power. It was given no power to alter any law, or to amend or enlarge any of the constitutional provisions, either by direct decree or indirectly by any other order or decision or device.

Therefore, the action taken by the Justices of the Supreme Court of the United States, in the case of Davis against the County School Board of Prince Edward County, is beyond any authority conferred upon the Court by the Constitution, in that the members of the Court acted beyond the prescribed limit of judicial authority. Accordingly, their proceedings are not an authorized act of the Supreme Court but merely the act of members of the Court, and are hereby declared to be unauthorized, and unconstitutional, invalid, and not the law within the jurisdiction of this State.

The General Assembly of Virginia further declares that what is purported to be a ruling of the United States Supreme Court in *Brown* v. *Board of Education et al.* is not a constitutionally authorized ruling of the Court, and hence is unconstitutional, invalid and not law within the jurisdiction of this State. The ruling is beyond the authority granted, in that the members of the Court have attempted to exceed their constitutional power which is limited under the provisions of article III to "judicial power." The ruling, if validated by this State, would be in denial of the established rule of law, that the intent of those who framed and adopted the Constitution or the amendments thereto must govern in its construction. Furthermore, such approval by the parties signatory would be an attempt to give a legal effect to the ruling as if it were in effect an amendment to the Constitution of the United States, which to be valid must have the approval of three-fourths of the States.

The General Assembly of Virginia declares that in issuing unauthorized decrees which interfere with the administration of the laws and the constitution of this Commonwealth, in relation to its public schools, and in seeking to enforce such decrees with court orders and injunctive writs, the Court's proceedings are in violation of section I of article I and section I of article II of the Constitution of the United States, are unconstitutional, invalid, and not law within the jurisdiction of this State.

The General Assembly of Virginia further declares that the Justices of the Supreme Court, in concert with members of the Federal district courts of the United States, have proceeded in violating section 2 of article III of the Constitution of the United States, in abdicating their constitutional responsibility and duty under said section, to try all cases in which a State shall be a party, and in procuring the usurpation of that power by members of the Federal district courts; and that therefore those acts are unconstitutional and are invalid and not law in this State.

It has heretofore been considered that due restraint would voluntarily be exercised by the agencies of the Government so created, and especially by the members of the Supreme Court, to the end that they would confine their areas of activity and procedure and their rulings, strictly within the limits fixed under the Constitution and within the authority defined therein so as to be in accord with its fixed requirement that they and each of them, "shall be bound by an oath to support this Constitution."

The necessity for this action now being taken by this State, is occasioned by such flagrant disregard of the fixed constitutional limitations binding upon the Supreme Court, that their lack of restraint has been made the subject of criticism, not only by outstanding jurists, but by a resolution of the association of the heads of the supreme courts of all the States of this Nation, by leading bar associations, and by outstanding members thereof.

These criticisms are not only leveled at the failure of the Court to exercise proper restraint in recognition of the limits of its authority but they also are directed at decisions which question the power of the Government of the United States to defend itself from enemies within the country, acting in alliance with enemies outside the country, which action thwarts the agencies concerned with the defense of the country from these enemies.

The government of this State has exhausted all possible means of arriving at a solution to this problem without the exercise by this State of the reserved powers to defend the State from the unlawful actions of the Supreme Court and we must now proceed in accordance with the actions herein taken, to the effect that unlawful unauthorized procedures of the members of the Court, which represent a usurpation of power which clearly is not accorded to them under the compact, binding and limiting their conduct, will not be recognized as law within the jurisdiction of this State.

This action of the State, is notice (1) to the other governments which are signatory parties, along with the government of this State, to the compact known as the Constitution of the United States; (2) to the agencies and the departments thereof generally known as departments of the Federal Government, and which have been constituted under this agreement; and (3) to those persons who have been selected to occupy and who now occupy the positions, and who have accepted the obligations to perform the duties, as defined and limited in said compact.

A BILL TO HELP SMALL BUSINESS

Mr. ROOSEVELT. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ROOSEVELT. Mr. Speaker, on January 25, 1960, and again on March 16, 1960, I addressed the House and discussed various legislative proposals which have been made to help small business. In the statement I made January 25, 1960, I referred to the fact that the Federal Trade Commission, in reporting on practices and conditions in the food industry, stated that there have developed tendencies to concentration of economic power, to collusive price action, and to unfair competitive methods. In that connection, Hon. John W. Gwynne, then Chairman of the Federal Trade Commission, in announcing that the Federal Trade Commission would study the situation said:

> We want to know why the industry is getting so tough for the smaller operator. * * * The trend seems to be to eliminate the small man entirely.

Subcommittee No. 5 of the House Small Business Committee directed its attention and study to this situation. We held extensive hearings and received a large amount of testimony and other evidence on the integration practices, financing of small business, and the economic significance of the concentration of economic power in food distribution.

We heard from all segments of the food industry, including processors, wholesalers, retailers, and farmers. From all of this information we developed a broad picture of the small business problems in food distribution. We heard almost 100 witnesses and built up a printed record of some 2,000 pages. Out of this mass of information emerged a showing of the need for legislation to help small business. We were shown that approximately 40 percent of food retailing has become concentrated under the control of a few chain food retailers. We were told that this tremendous hold of the retail food market was not helping the consumers, but was adversely affecting competing small business concerns and farmers. Producers of fruits, vegetables, and livestock are said to be suffering from this concentration of economic power. We were told that their markets are being closed to them except through the marketing facilities of the large chain food retail concerns which arbitrarily determine marketing practices and pricing. Our Denver, Colo., hearings showed that large chain food retailers are getting into the production, preparation, and distribution of meat food products. They are proceeding from that position backward through the integration of the processing, slaughtering, and even the feeding of cattle to a control of marketing, with the result that producers are being denied the benefits of competition in the marketing of livestock.

Representatives of small meat packers, feed lot operators, ranchers, and many other businesses testified that the practices of large food retailers in integrating the retailing with the feeding, slaughtering, and packing of meat food products are destroying small and independent business enterprises and competitive markets for those products. In that connection, it was pointed out that the strongest argument now being put forward by the large packers for relief from the provisions of the meatpacking decree of 1920 is the fact that the large food retailers are integrating backward into the meatpacking business. In that connection, I stated on the record during the course of our hearings in Denver that if the basic and fundamental principles which brought about that consent decree were sound, and we must believe they were sound—they remained in operation for many many years, and were, therefore, in the public interest—it would seem to me a poor excuse to upset them simply because someone else in the other direction was going forward to accomplish the same thing. And my question would be, Would it be unreasonable to think that should the 1920 consent decree be reversed, or be obliterated, that there would also be the great danger that that would be the opening door for an amalgamation of the chainstore and the large packer to accomplish exactly what was prohibited in 1920?

In view of these circumstances I have proceeded to introduce several bills designed to help small business. One of those bills introduced on January 25, 1960, was H.R. 9897. Section 1 of that bill would make it unlawful for large chain food retailers to engage in the meatpacking business, and, also, would keep the large packers from engaging in the retail food business. Section 2 of the bill provided for the marketing of livestock for slaughter on the basis of competitive bids made openly and publicly. That provision was designed to operate against large buyers taking advantage of livestock producers through pressure exerted at private negotiations. A number of our colleagues introduced identical bills because they felt these objectives were worthwhile.

In recent weeks, representatives of large ranches and feed lot operators have talked with me about the second provision of H.R. 9897. Some of them have told me that they have arrangements with large meatpackers which extend over a period of several months and pursuant to the terms of which the large meatpackers take the cattle from the feedlots as they are finished as fat cattle. They stated they believed section 2 of H.R. 9897 would interfere with these arrangements.

In view of these representations, I have had several discussions with colleagues who became interested in this matter, one of whom is the gentleman from South Dakota [Mr. McGOVERN]. Following these discussions and their suggestions, I am today introducing a bill which is a revision of H.R. 9897 in that the bill I am introducing today contains only one provision. It is the provision making it unlawful for large chain food retailers to engage in the meatpacking business, and making it unlawful for the large meatpackers to engage in the business of operating retail food stores.

The bill would accomplish this purpose through an amendment to the Packers and Stockyard Act of 1921 so as to make it unlawful for any packer or any other person engaged in the business of manufacturing or preparing livestock products or in the wholesale marketing of meats, meat food products, livestock products, and so forth—when such person, during the immediately preceding calendar year, enjoyed gross sales of more than $10 million—to engage in the business of selling at retail any such products.

VOICE OF AMERICA SPANISH LANGUAGE BROADCAST TO LATIN AMERICA

Mr. SELDEN. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. SELDEN. Mr. Speaker, for some time now I have urged the use of radio broadcasts to beam the facts to Latin America. I was glad to learn that the Voice of America has resumed Spanish-language broadcasts to the area. As of yesterday, hour-long broadcasts, including newscasts, a 5-minute commentary, a 10-minute feature, and a music program will be broadcast by shortwave nightly.

With the high illiteracy that prevails in some areas of Latin America, it is important that facts be presented to people who rely on the spoken word for information. Where there is an intentional distortion in reporting events, such as is occurring presently in Cuba, it is especially urgent that unvarnished truths be made available.

It is generally recognized, however, that shortwave broadcasts can have only marginal value. In the Caribbean area, for instance, only about 10 percent of the radio sets are equipped to receive shortwave. Yet it is imperative that

all those who have an interest in developments in that tense region be truthfully informed of U.S. policies.

In order to be effective, Voice of America broadcasts will have to be made on mediumwave bands. I am gratified that the executive department is making a thoroughgoing effort to get such broadcasts under way by means of commercial radio stations. I understand that a number of serious technical problems have been encountered, such as the paucity of stations with sufficient power capabilities and the necessity for a clear frequency.

Should the Voice of America be unable to find suitable commercial facilities for broadcasting to Latin America, I am confident that Congress will be prepared to assist in alternative proposals for getting the true facts over the airwaves to our neighbors to the south.

UNIQUE ETIQUETTE FORUM STAGED FOR AIRMEN'S WIVES

Mr. ROBISON. Mr. Speaker, I ask unanimous consent that the gentleman from Massachusetts [Mr. CONTE] may extend his remarks in the body of the RECORD and may include certain extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. CONTE. Mr. Speaker, I rise to bring to the notice of my respected colleagues an event which offers evidence that good community citizenship is also good business.

In my own district in Massachusetts we are proud to have fostered some of the Nation's leading industries, both large and small, which take their stature and dignity from the strength of character of those who manage them and those who make them productive.

We are proud also that our area was chosen for a vital national purpose the creation of a huge bastion of our national defense, the Westover Air Force Base, a major establishment of our Strategic Air Command.

Here, many thousands of trained men have been assembled to keep the air above us inviolate from assault. Here they have brought their families from all parts of our Nation, people of diverse backgrounds and cultures to the extent that Americans happily conform to no rigid molds of uniformity in their tastes and interest. But they are agreed on one deeply felt precept—their love for their country and their determination that it shall remain free. There can be no better proof of that mutually held conviction than their presence in our community.

Their devotion is not to be measured alone by the dedication of the men who are in the air every hour of the day, never flagging in their watchfulness, committed to the unspoken perils that face every soldier.

It is to be measured also by the sacrifices of their families in accepting quietly the dislocations of family life as they move from the homes they have always known to other parts of the country—and, as often, to other parts of the globe even more strange.

It can therefore be said of the wives and children of our airmen, "They also serve."

A token of its obligation to them has been given evidence this week by one of the industries long established in the district I have the privilege to serve.

The organization is the White & Wyckoff Manufacturing Co. in Holyoke, Mass., which for 80 years has been providing the Nation with writing papers and allied products of traditionally high New England quality. The president, Mr. Edward P. White, is a man aware of his New England heritage and its long history of setting up standards and pace for the Nation to follow. This pertains not to products alone but also to human relations and values.

This week Mr. White sent a "buslift" to the Westover Air Force Base to gather up 100 wives of airmen as guests for the day of himself and his organization. They were brought first to the plant for an instructive tour of its facilities—an enlightening lesson in the miracles of the American manufacturing processes.

They were then similarly transported to the Roger Smith Hotel in Holyoke, where a function was arranged to reinforce them in the patterns of American family living, to which they strive to adhere as mothers, wives, and homemakers.

Prepared for them was an event bringing into focus these gracious attributes which they had never lost in the frequent packings and movings. They were brought into an "etiquette forum," unique in the respect that it reflected the changing patterns of manners and graces in the world of change they know so well. The forum was expertly conducted, for thoughtful provision had been made in that respect. The ladies also were guests of Mr. White and his company for tea and refreshments. They were given gift packets, and other evidences of New England hospitality were extended.

The hundred ladies did not represent an impressive portion of the market of their host, and they are unlikely to influence its prosperity. But Mr. White has not concealed the fact that they do bear some relationship to the nature of his company's production, for they are, as service wives, "the writingest women in the world."

The Etiquette Forum, its sponsor believes, will not by itself change the face of our national defense posture to the smallest degree. But if multiplied as a gesture by the hundreds of American communities which harbor defense establishments, it will improve greatly the hospitality extended to the families of servicemen.

Mr. White and his company have, to the extent that individual action is possible, raised the H.Q.—the happiness quotient—of one American community, making it a more healthy and attractive place for people and new industries to live.

Essentially, we do not live in a Nation so much as we do in one of its communities. If the needs and obligations of each community are met with an adequate sense of responsibility, assumed by a requisite number of citizens in each, the unity and security of our whole Nation are amply assured.

DOUBLE IMMIGRATION QUOTA

Mr. MACDONALD. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MACDONALD. Mr. Speaker, I want to take this opportunity to commend President Eisenhower for his recent proposal to eliminate some restrictive and discriminatory features contained in the present immigration and nationality law.

In his special message to Congress on March 17 the President urged Congress to double the annual quota for immigration into this country and also authorize entrance of refugees above the quota limits. His proposals base the formula for limiting immigration on the 1950 census until the results of the 1960 census is available. Presently the outmoded census of 1920 is used. The President also urged that the total number of immigrants be put at one-sixth of 1 percent of the total U.S. population. This would increase the quota system from the present 154,657 to an estimated 300,000 when the 1960 census is completed.

Under the present law, immigration quotas for most foreign countries are based on a percentage of people of the same race and ethnic group making up the U.S. population. The President urged abandonment of this concept, and substituting as the base the number of immigrants actually accepted from each country between 1924 and 1959. The President also proposed that immigration quotas not fully used by some countries should be redistributed among countries in which the number of applicants for immigration exceeded the quota limit. In addition to liberalizing the regular immigration quotas, the President urged that Congress provide for the admission into the United States of refugees from oppression and persecution due to race, religion, political upheaval, or national calamity.

Mr. Speaker, I would like to point out that I have introduced an immigration bill designed to carry out the President's recommendations. We in the United States know that our population stems from many races, groups, and religions. It is also clear beyond dispute that our country has developed and prospered because we have made it a practice to offer a welcoming hand to substantial numbers of immigrants who were seeking freedom and equal opportunity. Our moral and material advancement has been due principally to the fact that we have had a liberal and progressive immigration policy. That liberal immigration policy, which allowed my ancestors to come to this country must be renewed if this country is not to lose an essential source of its great invigorating strength.

I would like to point out that the Eighth Congressional District of Massachusetts, which I have the privilege of representing, has a large number of naturalized American citizens, who find it impossible to bring into this country other members of their families from countries in southern Europe. This is unquestionably due to the discriminatory provisions of the McCarran-Walter Act of 1952.

The discriminatory nature of the McCarran-Walter Immigration Act, its injustices against naturalized American citizens and its restrictions upon immigration is generally recognized. But the McCarran-Walter Act is still on our statute books. I had hoped that during the 1st session of the 86th Congress some action would be taken to revise this act. As a matter of fact, in both the 84th and 85th Congresses I introduced legislation to revise and recodify our immigration and naturalization laws and replace the McCarran-Walter Act. These measures called for the abolition of the national origins quota system with its illogical, undemocratic, unrealistic, discriminatory racial inferiority provision. I felt that the way to improve this system was to abolish it and to adopt a fundamental immigration policy for our country which would select immigrants on the basis of their individual worth and not place primary importance on the geographical area of their birth.

Mr. Speaker, the McCarran-Walter Act permits immigration to this country by those who do not wish to do so while it denies that right to those who have both the need and desire to relocate in the United States. All one has to do is to look at the record and they will see that of the total McCarran-Walter Act quota, almost 42.2 percent goes to Great Britain and Northern Ireland, and this allotment goes largely unused. Germany has a quota of 16.7 percent; Eire—Ireland—11.5 percent. Italy has 3.6 percent of the total quota, less than Poland, with 4.2 percent. I would like to point out that between 1900 and 1910, 2,045,877 immigrants from Italy entered the United States, an average of over 200,000 per year. The act of 1921 decreased this amount to 42,000 per year and under the national origins formula of the McCarran-Walter Act this figure was further reduced to 5,645. During the 1900 to 1910 period over 167,000 Greeks migrated to this country, an average of over 16,000 a year; under the McCarran-Walter Act 308 Greeks are entitled to enter the United States each year.

It is apparent to every observer of the Italian and Greek situations that significant increases in the number of people who migrate from these countries—in the case of Italy as many as 200,000 per year for a 10-year period—are essential if they are to continue their economic recovery and to take their proper places with the countries of the free world. Therefore, it is imperative that the bill I have introduced be enacted into law at the earliest possible moment, in order that the unused quota allowances for countries such as Great Britain and Germany could be used by southern European countries, such as Italy and Greece.

It is my hope that when the 86th Congress adjourns we will be able to point with pride to the fact that our present nationality quota system has been corrected; that unused quotas are being reallocated; mortgaged quotas canceled; citizenship rights protected and other inequities of the McCarran-Walter Act alleviated.

To accomplish this we must have greater action than has been shown by the Congress. It seems very strange to me that with the President of the United States calling for revision of our immigration law and the leadership of both political parties pledging themselves to major revision of the McCarran-Walter Act, yet all we get to date are minor revisions of the act.

Mr. Speaker, I repeat again that the time has come for a fundamental change in our American immigration policy. We cannot afford to wait any longer; we cannot allow slipshod, racially conceived and arbitrarily executed legislation to thwart both our own need for skilled citizens and the qualified alien's desire to contribute. We must agree upon a measure, such as the bill which I have introduced, that again places our immigration policy upon a level compatible with our national heritage.

The golden door, which was once wide open to all the world, including our own forbears, must not be tightly closed now by an unrealistic approach dictated in the 1920's. We can no longer avoid, as we did in that decade, the responsibilities that have been placed upon us as a leader of free nations. We must take care that our immigration policy, like every other aspect of our behavior toward foreign persons and states, reflects the genuine and durable principles of our democracy. It must be effective, and at the same time equitable; it must be orderly and at the same time flexible; and it must, above all, be motivated by that great source of our own strength, an abiding respect for the individual.

It is with all these considerations in mind that I have introduced this bill, and that I respectfully urge you to support H.R. 11287.

FAIR TRADE BILL

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that the gentleman from Michigan [Mr. DINGELL] may extend his remarks at this point in the body of the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. DINGELL. Mr. Speaker, many have claimed a fair trade law would result in a small businessman's utopia. Perhaps in the total effect of such legislation there might be some slight benefit conferred on the little businessman.

However, recently the Kefauver committee has come up with some revelations which are highly significant in showing that not only does the fair trade bill now pending offer danger to the consumer but it tends to restrict sales and actually encourages price cutting.

First, it becomes clear that the real purpose of fair trade is to give the large drug and pharmaceutical houses an opportunity to absolutely control marketing of pharmaceuticals at all levels, manufacturing, retail, and wholesale, and to protect the already excessive profit margins that customers must pay for drugs required to protect, conserve, and restore health.

The committee recently pointed out one drug, prednisone, could be made for 1.6 cents each, in the bottle, while the big drug houses charged the drugstore $17.90 per hundred, and the customer paid 30 cents apiece for the tablet. A small firm was selling the exact same drug to drugstores for $17 per thousand, or one-tenth what the big drug houses charged for the same drug.

The Kefauver committee computed the cost of Miltown tranquilizer tablets at seven-tenths of a cent, while the product was marketed for 5.1 cents apiece, or for a net profit after taxes of 1.2 cents per tablet, almost double the production cost.

Serpasil tablets were offered to the Government at 60 cents per thousand, while its regular price to the druggist is $39.50 per thousand.

An antiarthritic pill is sold in England for $7.53 a bottle, or about 50 percent less than its cost to Americans. American firms sell Miltown in Argentina for one-quarter of its cost in the United States.

If the fair trade bill becomes law and absolute price control is vested in the hands of pharmaceutical manufacturers these practices will be legitimatized and encouraged to the detriment of both the retail industry and the consumer.

PRESENTATION OF STATUE OF SENATOR PAT McCARRAN TO THE UNITED STATES OF AMERICA IN THE ROTUNDA OF THE CAPITOL

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that the gentleman from Nevada [Mr. BARING] may address the House for 1 minute and to revise and extend his remarks.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. BARING. Mr. Speaker, it is my privilege to extend to the Members of the U.S. House of Representatives, their staffs, both office and committee, officers of the House of Representatives and their staffs, Capitol employees, and all others who were friends of the late Senator Pat McCarran, of Nevada, a most cordial invitation to attend the presentation of the statue of Senator Pat McCarran, by the State of Nevada, to the United States of America. The ceremony will be held tomorrow afternoon, Wednesday, March 23, at 2 p.m. in the rotunda of the Capitol. Cardinal Spellman will deliver the invocation; the Chaplain of the Senate, Dr. Frederick Brown Harris, will give the benediction. The Governor of

my own State of Nevada, the Honorable Grant Sawyer, will present the statue, and our Lieutenant Governor, the Honorable Rex Bell, will participate in the ceremony, together with the majority and minority leaders of the Senate, and the Nevada congressional delegation, my colleagues, Senator Alan Bible, Senator Howard Cannon, and myself.

Mrs. McCarran and members of her family will be present, and they join me in extending this invitation to those who would like to attend. No admission card is necessary. Following the ceremony, a short reception will be held in the Old Supreme Court Chamber, to which you are also cordially invited.

EXTENSION OF REMARKS

By unanimous consent, permission to extend remarks in the CONGRESSIONAL RECORD, or to revise and extend remarks, was granted to:

Mr. MULTER, to extend his remarks in the body of the RECORD and to include extraneous matter immediately prior to the vote on the first Celler amendment in Committee of the Whole today.

Mrs. GREEN of Oregon to extend her remarks in the body of the RECORD at that point just prior to the vote on the Cramer amendment to the Celler amendment.

Mr. WOLF and to include extraneous matter.

Mr. MCSWEEN, to revise and extend his remarks at that point in the RECORD before the vote on the Cramer substitute to the Barden amendment.

Mr. OLIVER.

Mr. BOW, to revise and extend remarks he made in Committee of the Whole today on the civil rights bill and to include extraneous matter in his colloquy.

Mr. PELLY, to include a resolution in his remarks made in Committee of the Whole during debate on H.R. 8601.

Mr. MEADER, to revise and extend remarks made by him in Committee of the Whole today and to include certain tables, quotations, and other extraneous matter.

Mr. BLATNIK.

(At the request of Mr. ROBISON, the following Members were given permission to revise and extend their remarks in the CONGRESSIONAL RECORD and to include extraneous matter:)

Mr. DAGUE.

Mr. ALGER.

Mr. CANFIELD.

Mr. CURTIS of Missouri.

(At the request of Mr. ULLMAN, the following:)

Mr. BURDICK.

SENATE ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to enrolled bills and a joint resolution of the Senate of the following titles:

S. 601. An act to authorize and provide for the construction of the Bardwell Reservoir;

S. 1712. An act to extend the application of the Motorboat Act of 1940 to certain possessions of the United States;

S. 2185. An act to provide appropriate public recognition of the gallant action of the steamship *Meredith Victory* in the December 1950 evacuation of Hungnam, Korea;

S. 2483. An act to provide flexibility in the performance of certain functions of the Coast and Geodetic Survey and of the Weather Bureau; and

S.J. Res. 115. Joint resolution authorizing the purchase of certain property in the District of Columbia and its conveyance to the Pan American Health Organization for use as a headquarters site.

ADJOURNMENT

Mr. ULLMAN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 31 minutes p.m.) the House adjourned until tomorrow, Wednesday, March 23, 1960, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1969. A letter from the Administrator, Foreign Agricultural Service, U.S. Department of Agriculture, transmitting a report concerning agreements concluded during February 1960 under Public Law 480, 83d Congress, pursuant to Public Law 85–128; to the Committee on Agriculture.

1970. A letter from the Comptroller General of the United States, transmitting a report on examination of the military assistance program administered by the Department of the Air Force; to the Committee on Government Operations.

1971. A letter from the Secretary of the Army, transmitting a draft of proposed legislation entitled "A bill for the relief of Dr. Henry H. Cohan," to the Committee on the Judiciary.

1972. A letter from the Secretary of the Army, transmitting a draft of proposed legislation entitled "A bill to amend section 2 of the River and Harbor Act of July 3, 1930"; to the Committee on Public Works.

1973. A letter from the Comptroller General of the United States, transmitting a report on the examination of the economic and technical assistance program for Guatemala as administered by the International Cooperation Administration (ICA) of the Department of State and its predecessor, the Foreign Operations Administration, under the mutual security program for fiscal years 1955 through 1959; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LANE: Committee on the Judiciary. House Resolution 470. Resolution providing for sending the bill H.R. 10919, with accompanying papers, to the Court of Claims; without amendment (Rept., No. 1410). Referred to the Committee of the Whole House on the State of the Union.

Mr. LANE: Committee on the Judiciary. H.R. 10978. A bill to provide for the settlement of claims against the United States by members of the uniformed services and civilian officers and employees of the United States for damage to, or loss of, personal property incident to their service, and for other purposes; with amendment (Rept. No. 1411). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LANE: Committee on the Judiciary. H.R. 4428. A bill for the relief of S. Sgt. John E. and Mrs. Caroline Almeida; with amendment (Rept. No. 1412). Referred to the Committee of the Whole House.

Mr. LANE: Committee on the Judiciary. H.R. 9442. A bill for the relief of Charles Bradford LaRue; without amendment (Rept. No. 1413). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DULSKI:

H.R. 11308. A bill to amend the Tariff Act of 1930 to impose a duty upon the importation of bread; to the Committee on Ways and Means.

By Mr. GREEN of Pennsylvania:

H.R. 11309. A bill to establish a Federal Recreation Service in the Department of Health, Education, and Welfare, and for other purposes; to the Committee on Education and Labor.

H.R. 11310. A bill to amend title X of the Social Security Act to provide that, without an increase in Federal participating funds, a State plan for aid to the blind may utilize a more liberal needs test than that presently specified in such title; to the Committee on Ways and Means.

By Mr. MONAGAN:

H.R. 11311. A bill to change the method of payment of Federal aid to State or territorial homes for the support of disabled soldiers, sailors, airmen, and marines of the United States; to the Committee on Veterans' Affairs.

By Mr. MOORHEAD:

H.R. 11312. A bill to amend title V of the Agricultural Act of 1949, as amended, to provide, in connection with the employment of workers from Mexico, protection against unfair competition from corporate agriculture to the American family farm, and protection for the employment opportunities of domestic agricultural workers in the United States, and for other purposes; to the Committee on Agriculture.

By Mr. PELLY:

H.R. 11313. A bill to amend title V of the Agricultural Act of 1949, as amended, to provide, in connection with the employment of workers from Mexico, protection against unfair competition from corporate agriculture to the American family farm, and protection for the employment opportunities of domestic agricultural workers in the United States, and for other purposes; to the Committee on Agriculture.

By Mr. ROOSEVELT:

H.R. 11314. A bill authorizing an appropriation for the construction of a nonsectarian chapel and shrine as a memorial to Dr. George Washington Carver, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 11315. A bill to amend the Packers and Stockyards Act, 1921, to strengthen independent competition by providing for competitive enterprise in the retail sales of meat, meat food products, livestock products, and other food items; to the Committee on Agriculture.

By Mr. McGOVERN:

H.R. 11316. A bill to amend the Packers and Stockyards Act, 1921, to strengthen independent competition by providing for competitive enterprise in the retail sales of meat, meat food products, livestock products, and other food items; to the Committee on Agriculture.

By Mr. CAHILL:

H.R. 11317. A bill to amend section 1461 of title 18 of the United States Code with respect to the mailing of obscene matter, and for other purposes; to the Committee on the Judiciary.

By Mr. KILDAY:

H.R. 11318. A bill to provide that those persons entitled to retired pay or retainer pay under the Career Compensation Act of 1949 who were prohibited from computing their retired pay or retainer pay under the rates provided by the act of May 20, 1958, shall be entitled to have their retired pay or retainer pay recomputed on the rates of basic pay provided by the act of May 20, 1958; to the Committee on Armed Services.

By Mr. PERKINS:

H.R. 11319. A bill to provide that in determining the amount of retired pay, retirement pay, or retainer pay payable to any enlisted man, all service shall be counted which would have been counted for the same purposes if he were a commissioned officer; to the Committee on Armed Services.

By Mrs. SULLIVAN:

H.R. 11320. A bill to amend section 491 of title 18, United States Code, prohibiting certain acts involving the use of tokens, slugs, disks, devices, papers, or other things which are similar in size and shape to the lawful coins or other currency of the United States; to the Committee on the Judiciary.

By Mr. WILSON:

H.R. 11321. A bill for the relief of certain defense-related company employees who performed services during 1953, 1954, and 1955 on a temporary duty basis in the area of Edwards Air Force Base, Calif., or Air Force Plant 42, Palmdale, Calif.; to the Committee on Ways and Means.

By Mr. PERKINS:

H.J. Res. 657. Joint resolution making technical corrections in certain provisions of title II of the Social Security Act, as amended by the Social Security Amendments of 1958; to the Committee on Ways and Means.

By Mr. FLYNN:

H. Con. Res. 639. Concurrent resolution relating to restoration of freedom to captive nations; to the Committee on Foreign Affairs.

By Mr. O'HARA of Illinois:

H. Con. Res. 640. Concurrent resolution relating to restoration of freedom to captive nations; to the Committee on Foreign Affairs.

By Mr. FORAND:

H. Res. 483. Resolution providing for the consideration of the bill H.R. 4700; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. FORRESTER:

H.R. 11322. A bill for the relief of Col. Joseph A. Nichols; to the Committee on the Judiciary.

By Mr. JACKSON:

H.R. 11323. A bill for the relief of Ernest Lee (Lee Ming-Sing); to the Committee on the Judiciary.

By Mr. JOHNSON of California:

H.R. 11324. A bill for the relief of Mrs. Elaine R. Klassy; to the Committee on the Judiciary.

By Mrs. KEOGH:

H.R. 11325. A bill for the relief of Mrs. Mary Kaye; to the Committee on the Judiciary.

H.R. 11326. A bill for the relief of Fay Cisneros; to the Committee on the Judiciary.

By Mr. SCHENCK:

H.R. 11327. A bill for the relief of Chauncey A. Ahalt; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

389. Mr. GROSS presented a petition of 16 residents of Riceville, Lime Springs, and Cresco, Iowa, in favor of payment of a pension to World War I veterans as stipulated in H.R. 9336, which was referred to the Committee on Veterans' Affairs.

EXTENSIONS OF REMARKS

Imports of Lambs and Sheep

EXTENSION OF REMARKS
OF

HON. ROMAN L. HRUSKA

OF NEBRASKA

IN THE SENATE OF THE UNITED STATES

Tuesday, March 22, 1960

Mr. HRUSKA. Mr. President, in view of the import statistics in the last 2 or 3 years as compared with previous years, it is not difficult to realize that the sheep industry is justifiably alarmed and distressed at the serious threat to continued existence in the United States. My State of Nebraska is among those that are so concerned.

The sheep and wool industry is a vital one to the well-being of this country. Sound national policy would dictate that such measures as are available be taken to assure survival of the growing of sheep and the production of wool within the United States, and the avoidance of a situation of being totally dependent on imports for our supplies.

Steps in the direction of either tariff rates revision or of quotas on imports can be taken only through action before the Tariff Commission and a recommendation by it which will later be acted upon by the President.

Hearings before that Commission on this subject are currently in progress.

Among the witnesses who have been called to testify on the current and specific statistics, especially as they apply to Nebraska and Wyoming, are Charles Jones, of Huntley, Wyo., president of the North Platte Valley Lamb Feeders Association; J. F. (Pat) King, of Morrill, Nebr.; and Lowell Wilkes, of Scottsbluff, Nebr.; who are members of that association.

It is from witnesses as these that the real, brutal impact of imports on the domestic industry will be clearly and forcefully presented and portrayed.

As a preliminary to their more specific and authoritative presentation, the Senator from Nebraska personally appeared before the Tariff Commission earlier today to present a statement on this general subject.

Mr. President, I ask unanimous consent that there be printed in the RECORD the statement to which I refer.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR ROMAN L. HRUSKA BEFORE THE U.S. TARIFF COMMISSION ON LAMB AND MUTTON IMPORTS INTO THE UNITED STATES

I appreciate this opportunity to appear before the U.S. Tariff Commission on the subject of lamb and mutton imports into the United States.

The prompt scheduling of this hearing on your own motion following the application of the National Wool Growers Association and the National Lamb Feeders Association was gratifying to all who are concerned with and affected by the growing competition from lamb and mutton imports facing this industry.

Much attention has been justly devoted to this recent development by the press and trade journals. It is abundantly clear that the industry is genuinely alarmed and distressed by the growing competition from abroad. Its concern with the present and prospective situation must not be ignored if our domestic production is to survive the new developments.

Under such circumstances, this hearing and the reported findings by the Tariff Commission will accomplish many good purposes. In the first place, a record will be available against which we can substantiate or dispel the apprehensions of the lambgrowers.

The alarm, by the way, over the present import situation must not be underestimated. With the information presented at hand, it is reasonable to say that the picure has changed over night. Shipments of mutton into this country increased from 17.2 million pounds in 1958 to 47.3 million pounds in 1959. Imports of lamb climbed to 9.5 million pounds last year as contrasted with 6.8 million pounds in 1958.

The total imports of lamb and mutton were more than twice as high in 1959 as in 1958, and 15 times as high as the 8-year average from 1950 to 1957.

We are told that Australia and New Zealand have immense sheep populations. These countries are seeking new markets, especially since the termination of an agreement to supply the United Kingdom market with certain quantities of lamb and mutton. Indicative of this, in addition to increases in imports of dressed lamb and mutton, last fall two shipments of live lambs, and so far this year a third, each numbering about 25,000 head, were imported from Australia.

The long-range and total meaning of these figures I will leave to those present and intending to testify. They are better versed in the economics and familiar with the statistics which pertain to this situation. They are prepared to furnish the desired analysis and evaluation which might assist you in this investigation. I will make only one, possibly self-apparent, observation. As matters now stand, such foreign production spells competition under increasingly adverse conditions for American producers.

Furthermore, we do not need to speculate as to how soon such conditions will endanger the industry generally. The growers have already experienced a sharp drop in ewe prices. Also, last fall when imports of dressed lamb were heavy, growers received 15 percent less for their lambs than the year before, which was 7 percent lower than the average for the last 5 years.

The inescapable fact is that our Australian and New Zealand competitors can deliver lamb in this country considerably lower than our production costs. Furthermore, the marginal difference cannot easily be overcome. It is estimated that, to compete with the foreign price, our producers would have to be able to raise lamb for about one-half of what it costs today. Faced with steadily rising production costs, rather than declining, this means that the industry is virtually unable to match the foreign price.

Against this background of large and continually increasing imports, the need for the industry to turn to the Tariff Commission for protection of the domestic production is clear and urgent.

With me this morning are Mr. Pat King, of Morrill, Nebr., and Mr. Lowell Wilkes, Scottsbluff, Nebr., both representing the North Platte Valley Lamb Feeders Association. They join the many others present in urging this investigation under section 7 (the so-called escape clause) of the Reciprocal Trade Agreements Act. They have prepared a thoughtful statement with the knowledge that, only upon a finding that dressed lamb and mutton and live lambs are being imported into this country in such quantities as to cause or threaten to cause serious injury to the domestic industry, can the desired relief be recommended by the Tariff Commission.

I subscribe fully to the idea that an application be made to the Tariff Commission under this provision of the act. The action of the Commission, furthermore, in recognizing the urgency of their case by setting this hearing was indeed welcomed by all of us. Through your investigation will the industry obtain a full report regarding the current situation and the expected trends of the market.

Any action taken by the Tariff Commission must be geared to the established facts of immediate or threatened injury. In this respect, the reported findings will furnish the information and lay the foundation for recommendations balancing the needs of the industry and the public at large.

I commend to your attention the statements that will be made by the representatives of the industry present here this morning.

May I urge that careful consideration be given to establishment of action affording a proper and fair measure of protection to the domestic production of this vital industry.

St. Lawrence Seaway: Engineering Marvel; Economic Fizzle

EXTENSION OF REMARKS
OF
HON. PAUL B. DAGUE
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, March 22, 1960

Mr. DAGUE. Mr. Speaker, an editorial appearing in the Sunday edition of the Philadelphia Inquirer, entitled "Still Waiting for Spring on the Seaway," effectively points up the one feature; namely, the 4 months' freezeup, that persuaded many of us to vote against the project when it was originally before the Congress.

The Inquirer editorial is prefaced by this observation:

This is the first day of spring, by the calendar, but the ice is still hard along the St. Lawrence Seaway, where not a ton of ocean cargo has been moved since last December 3.

And then, to emphasize the vast difference between the seaway and a truly year-round waterway, the Delaware River, the Inquirer zeroed on the obvious shortcomings of a transportation medium that is out of service for 4 months out of every year in these words:

The St. Lawrence Seaway rates high as a product of human ingenuity, but it simply is not in the same class with the Delaware River when it comes to moving cargoes—whatever the season.

Last year, before the seaway went into deep freeze in December, it handled 20 millions tons of cargo. That's about one-fifth the tonnage on the Delaware in 1959.

Finally the Inquirer concluded with these comments:

The St. Lawrence Seaway may be an effective avenue of maritime commerce within narrow limitations, but its value and efficiency have been vastly overrated. The American people should be told more about the superior facilities provided by the Delaware River and the port of Philadelphia. And no waiting for the ice to break up in April, either.

Mr. Speaker, there is little that I can add to emphsize the facts of a situation which the quoted editorial has scored on all essential points. I want to reaffirm, however, that these facts were before the House when many of the Members voted against a project that could never be reasonably efficient and which will always constitute a two-pronged attack on Pennsylvania; namely, by bypassing the port of Philadelphia and at the same time exacting so much from our taxpayers to pay for what has turned out to be an economic disillusionment.

Johnny Kemp: 1960 National Easter Seal Child

EXTENSION OF REMARKS
OF
HON. QUENTIN BURDICK
OF NORTH DAKOTA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, March 22, 1960

Mr. BURDICK. Mr. Speaker, I am privileged and proud to pay tribute today to a young fellow North Dakotan who is an inspiration to all America and especially to all children and adults who live with crippling handicaps. He is, furthermore, outstanding proof of the fact that America cares what happens to its crippled.

This young man—10-year-old John Daniel Kemp, of Bismarck, N. Dak., is the son of John B. Kemp, civil engineer in charge of the Federal roadbuilding project in western North Dakota. He is also the 1960 national Easter seal child, chosen in recognition of his almost incredible conquest of a major handicap.

Johnny was born with only stumps of arms and legs. Today, because of the combined forces of many individuals, public and private health agencies brought to bear on his rehabilitation, and because of his own indomitable spirit, Johnny Kemp plays baseball, football, and marbles. He swims, draws, and writes. He attends regular school and gets better than average grades. He is an active member of a Cub Scout troop. He is a daily communicant at his church and he has a Sunday newspaper route. He is fully accepted as one of the boys in his neighborhood. All of this he accomplishes on two artificial legs and with two hook hands. It is his ambition to be a doctor.

Johnny is in Washington to further the annual Easter seal campaign of the National Society for Crippled Children and Adults and its affiliated units in all of our States. He is working so the diversified professional services of this organization may be extended to more crippled boys and girls in addition to the quarter of a million now being helped in Easter seal treatment centers throughout our Nation. He wants to see all crippled children have the same chance at rehabilitation he has had.

In view of the fact that nearly 5 percent of our population presently can profit from care such as that provided by the Easter seal societies and because some 60,000 babies are born in this country each year with major crippling problems, and because Johnny Kemp appears here today as the representative of these millions of Americans, I therefore commend and congratulate John Daniel Kemp for his remarkable achievement in personal rehabilitation. I wish him a long and useful and rewarding life and success to the Easter seal appeal for which he is working so unselfishly.

Federal Pay Increases

EXTENSION OF REMARKS
OF
HON. LEONARD G. WOLF
OF IOWA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, March 22, 1960

Mr. WOLF. Mr. Speaker, I have today presented the following statement to the Post Office Committee in regard to pay increases for postal workers.

STATEMENT BY CONGRESSMAN LEONARD G. WOLF, DEMOCRAT, OF IOWA, IN SUPPORT OF A PAY RAISE FOR POSTAL WORKERS AND OTHER FEDERAL EMPLOYEES, BEFORE THE HOUSE POST OFFICE AND CIVIL SERVICE COMMITTEE, MARCH 22, 1960

Mr. Chairman, I am wholeheartedly in favor of the enactment of legislation in this session of the Congress to provide a pay raise for our postal and other Federal employees. The wages of these employees should, without question, be brought up to the level of private industry for work requiring the same education, experience, training, skill, and intelligence.

The facts speak for themselves. In a recent issue of Labor Week, it was pointed

out that the average weekly "real" income of Federal workers (including post-office employees) was down 3.3 percent from last year. These figures are based on basic data of the U.S. Departments of Labor, Commerce, and Agriculture.

The most graphic single example of the need for a pay raise for our postal workers is in the fact that under the present pay scale, no mailman can qualify for a Federal Housing Authority loan on even a $15,000 home. To guarantee a $15,000 home, the FHA requires an annual salary of at least $5,384. No letter carrier in the entire United States is making such a salary. The average letter carrier's annual wage is $4,640.

To point up the problem which our postal employees are facing, I would like to set out the salaries being received by 14 postal employees in my district:

Employee	Gross pay each 2 weeks	Deducted for Federal taxes	Deducted for retirement	Deducted for insurance	Net pay each 2 weeks	Number of dependents
No. 1	$195.19	$21.10	$12.69	$1.50	$159.90	3
No. 2	195.19	16.40	12.69	1.50	164.60	3
No. 3	187.50	10.40	12.19	1.25	163.66	5
No. 4	191.72	11.10	12.19	1.25	167.18	4
No. 5	195.19	16.40	12.69	1.50	164.60	6
No. 6	195.19	7.10	12.69	1.50	173.90	5
No. 7	187.50	15.00	12.19	1.25	159.06	3
No. 8	187.50	19.70	12.19	1.25	154.36	3
No. 9	168.03	6.80	10.79	1.25	149.19	6
No. 10	187.50	19.70	12.19	1.25	154.36	2
No. 11	181.50	14.00	11.49	1.25	154.85	5
No. 12	188.88	15.30	11.49	1.25	160.84	3
No. 13	185.12	19.30	11.49	1.25	153.08	2
No. 14	191.35	15.70	12.44	1.25	161.96	3

It is not difficult to visualize the difficulty a parent faces in trying to feed and clothe and house as many as five children, most of them in school, and a wife, on a salary of $72 or $73 a week. The grocery bill alone for a family of this size cannot be less than $40 a week—at a bare minimum. That leaves $33 a week to pay for transportation, housing, clothing, utilities, and doctor bills.

Under the present pay scale, the postal employee receives less pay than the unskilled worker. Three Presidential vetoes have put this pay rate several years behind that of his fellow workers in private industry. If we expect to retain in the Federal service capable, efficient, and well-trained workers, we must pay them a livable wage.

I urge, Mr. Chairman, that this committee report out at the earliest opportunity legislation to bring the salaries of postal and other Federal workers into line with present-day realities.

Indignities to Humanity by Red China

EXTENSION OF REMARKS
OF
HON. GORDON CANFIELD
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Tuesday, March 22, 1960

Mr. CANFIELD. Mr. Speaker, the Passaic (N.J.) Herald-News on Saturday, March 19, 1960, carried a page 1 story with the caption "Meyner Proposes U.N. Admit China." Speaking in Los Angeles, Calif., Governor Meyner was quoted as saying:

> For if the United Nations can be transformed into an agency with effective powers, then the real question will be, not should Communist China be admitted to membership, but rather what can the world do to make sure that Communist China doesn't stay out.

I find myself in disagreement with this point of view. The country we are talking about is the same one that had the audacity to inflict an outrageous 20-year sentence upon Bishop James Edward Walsh. This was but the most recent of a series of indignities to humanity by Red China.

May we remember these acts and the unheeded protests of Secretary Herter when we consider whether or not such a government should be a part of the United Nations.

The People Are Fed Up With Our Present Farm Program

EXTENSION OF REMARKS
OF
HON. THOMAS M. PELLY
OF WASHINGTON
IN THE HOUSE OF REPRESENTATIVES
Tuesday, March 22, 1960

Mr. PELLY. Mr. Speaker, I desire to discuss once again my bill, H.R. 10350, proposed legislation to repeal all agricultural price-support subsidies and to provide for the disposition of the Commodity Credit Corporation inventory without disrupting normal marketings.

First, I should say frankly that the Department of Agriculture opposes enactment of my bill. According to the Department, the elimination of all price support, as contemplated in H.R. 10350, is not in the best interests either of farmers or the economy as a whole. The Department's report expressed concern for the magnitude of the Commodity Credit Corporation stocks and growing investment; but rather than advocate elimination of price-support activity, it viewed price support at realistic levels as valuable in helping facilitate orderly marketing and in stabilizing the economy.

As to the provision in my bill for use of proceeds of surplus sales for loans to help relocate small and inefficient farmers hurt by ending Federal farm subsidies, the Department preferred a program aimed at assisting such affected families stay in farming and as promoted now to widen off-farm job opportunities.

Mr. Speaker, the Department of Agriculture says that this year the United States will have another record or near-record production of crops. The Government survey shows that farmers will plant about as many acres of cropland this year as last. The prospect of this surplus-harassed industry is more overproduction, as was the case in 1959 and back in 1958. So, especially in grain, the surpluses accumulate year after year and go mostly into Government hands.

I asked for the best guess of the Department of Agriculture as to the price trend or level of wheat under conditions assuming removal of the present Government-held surplus from the domestic and foreign market as provided under my bill. All I could get in the way of an answer was that removal of the wheat surplus would have a stabilizing influence on market prices, but such a step was not believed to be in the interest of farmers or the economy.

Mr. Speaker, I have seen estimates of prices and trends furnished the House Committee on Agriculture based on proposed farm programs. I would have thought such projectures could have been arrived at under conditions believed probable if my bill were enacted. But I will say this, that there are those who favor a return to the law of supply and demand and the conditions which would result from my bill, and these same supporters are farmers. I think they know the situation. Many farmers have written saying they support my plan.

Almost 20 percent of the entire Federal budget, or more than $7 billion, is appropriated to help the farmers. That is too much. It is too much especially because the program is a failure. It is too much because it favors the big and rich as against the small and poor. It is too much because our farm program is socialistic and not in harmony with free enterprise. I am told a vast army of Federal career employees who hold their jobs through this federalized farm program opposed ending controls and subsidies. As one of my constituents wrote me a few days ago, we should back out of this farm giveaway before we are trapped and can never get out. I wonder if already it is not too late.

Speaking of constituents, I sent out a questionnaire with this question: "Do you favor reduction in agriculture price supports?" This went to a cross section of voters, and a tabulation of replies by an independent organization showed that 4,055 answered "Yes" in favor of reduction. Only 469 replied "No," that they were against a reduction.

Since I introduced H.R. 10350 I have received letters of support from all over the country. Here is a typical unsolicited letter which reached my office on Saturday. It is from Bridge City, Tex., and is a sample of the widespread opinion held by the American people in strong opposition to our acreage and price support farm program:

MARCH 15, 1960.

The Honorable THOMAS M. PELLY,
House Office Building,
Washington, D.C.

DEAR SIR: "Deo gratias" for you and your resolution H.R. 10350. It is my fervent hope that you will not waver in your fight to convince your colleagues of the saneness and merits of this all-important matter.

This is America—I believe. Then why must Congress be so discriminatory in its

legislations? Are the Members that hungry for self-gain? Then if this be the case they will certainly change when the rest of the 180 million Americans who are not farmers wake up.

The present program's purpose expired when the Nation came out of the depression period 20 years ago. Yet it keeps coming back like a song. One of the most aggravating melodies I have ever heard.

The only consequence of the immediate enactment of your proposals would be just so many millions having to get off Uncle Sam's "gravytrain" and go to work. The biggest consequence would be a marked decrease in the Federal budget—a budget that would end up with a tremendous surplus to pay off the national debt which seems to be the farthest thing from most Senators' and Representatives' minds. This is, of course, probable if the many Socialist-minded people in Congress doesn't give the money away to Tito, Poland, Cuba, or TVA, REA, or—you name it.

The Government needs a lot of money to keep its 17,000 businesses going, especially since Uncle Sam doesn't care if they make a profit or not. The taxpayers will make up their deficits and keep them in business.

I am following your efforts on this matter very closely in the CONGRESSIONAL RECORD. Please continue your American program. Let us always be able to say that this is America, "The land of the free and the home of the brave—and not the home of the hypocrite."

Respectfully yours,

EARL J. ANGELLE.

Four Star Television Series of Films on the Foreign Service

EXTENSION OF REMARKS

OF

HON. JOHN A. BLATNIK

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 22, 1960

Mr. BLATNIK. Mr. Speaker, it is heartening to be able to report that there is some constructive work under way in two areas which are the frequent targets of destructive criticism.

I have learned that Four Star Television, one of the largest and most reputable producers of television films, is working with the Department of State toward the production of a series on the work of the men and women of the Foreign Service.

The public image of the State Department has been distorted by a number of recent publications, notably a book called "The Ugly American." We would be foolish to maintain that in an organization so large, there are not persons unsuited to represent this country abroad; but it is my view that such people are the exceptions, rather than the rule. And I believe that most of our Ambassadors, consuls, and other diplomatic and technical attachés, do an onerous and important job, daily turning in a creditable performance, and occasionally a heroic one.

The television industry, too, has come in for a great deal of adverse publicity. Here again, I am unprepared to believe the venal and fraudulent efforts of the few should be generalized to characterize the many. There are producers to whom public service means more than a slogan, and whose taste earns them a place on my screen.

Therefore, a combination of the Department of State and a sincere producer can result in a series which raises the standards of the television medium, and portrays to the public a more accurate picture of the Foreign Service. I am confident that this producer will bring forth a series replete with appropriate dignity and information, and still one which is entertaining.

I should particularly like to commend Dick Powell, the head of Four Star for his vision in seeing the value in such a series; our good friend Sylvan M. Marshall, an outstanding Washington attorney, for his role in bringing the Department together with Mr. Powell; to John Scali, the foreign correspondent for the Associated Press, who will head up the creative writers; and to Assistant Secretary of State Andrew Berding, and his top aide, Edwin M. J. Kretzmann, for their cooperation.

Battle for the Free Enterprise System

EXTENSION OF REMARKS

OF

HON. BRUCE ALGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 22, 1960

Mr. ALGER. Mr. Speaker, under leave to extend my remarks I would like to include an article written for the magazine, Purchasing, by our able colleague, the Honorable THOMAS CURTIS, of Missouri. In his very keen, analytical manner, Mr. CURTIS has pinpointed the one overwhelming issue of today—the battle for the free enterprise system. Unless we win that fight and stop the headlong rush toward socialism, then our efforts in other fields are futile. I commend Mr. CURTIS' article to every thoughtful American:

TOO MUCH RELIANCE ON FEDERAL GOVERNMENT TO SOLVE ECONOMIC PROBLEMS—CURRENT CONGRESS WILL PUSH TREND TOWARD SOCIALISTIC STATE

(By Representative THOMAS CURTIS, of Missouri)

There are many issues which face the 2d session of the 86th Congress which are delineated economic. Many of these issues stem from the expressed desire of professional economists, businessmen, and politicians to have continued healthy economic growth coupled with maximum employment and reasonable price stability.

The Joint Economic Committee has recently completed a concentrated 10-month study into various aspects of these three goals—not without regard to whether the goals themselves are mutually inconsistent and, if they are inconsistent, which goals should bear the sacrifice in resolving an inconsistency.

I will list a few of the subjects upon which the Joint Economic Committee will make comments throughout the year. The farm program, antitrust legislation with particular reference to a phenomena which many economic observers claim to have seen and others claim does not exist—administered prices, Federal debt ceiling and interest rate ceiling on Federal securities, Federal Reserve Board policies on monetary policies and their relation to debt management, standby controls on credit and prices, legislation relating to the problems of industrywide strikes, Government purchasing policies, Federal expenditures for depressed areas, education, community facilities, health and public works, and a balanced budget.

The longer I serve in Congress, concentrating as I do on economic matters, the more concerned I become about the inarticulateness of those who believe in the private enterprise system—particularly vis-a-vis those who profess to believe in it and yet are constantly undermining its basic structure.

STUDY PROBLEMS

The staff of the JEC's study of employment, growth, and price levels is a case in point. The purpose of the studies of the JEC is:

(1) To take an objective look at our political-economic structure to try to discover the problems that exist.

(2) To bring into the open the various proposals that had been made to solve the problems.

(3) To subject these proposals to criticism.

I find that though the hearings and the papers prepared by the panelists do just that, the staff's report sets out its own particular series of solutions instead of the alternative solutions advanced by the panelists and others. The staff's solutions, almost without exception, rely on increased Federal Government activity and disregard whatever additional activity there might be in the private sector of the economy. The staff's analysis, in my judgment, shows a lack of understanding of what the private enterprise system is about or a basic distrust of it.

The significance of the staff's report is that the members of the staff are outstanding, hard working, and honest scholars. The question that therefore disturbs me the most about America and its future is this: Has scholarship in America reached a point where scholars do not know how to approach a subject to study and write about it objectively?

I shall call attention to just a few points:

1. The staff avoids the use of the term "administered" prices, which is commendable because the term begs the question. But its report, instead of discussing the economic issue involved, supplied another term, "market power," which just as effectively begs the question.

The question at issue is this: In certain industries, is there such a concentration of market power that prices can be set without regard to the economic consequences? If so, is this a matter that should be within the scope of the antitrust laws?

During the hearings, when this issue became the subject of discussion, I asked why the industries accused of "administering" prices were frequently the very industries that spent more time and money on market analysis and customers' buying habits than other industries. If these industries were trying to get information so that they could pay attention to the laws of economics (not try to abuse them) then the so-called "market control" they possessed would appear to be healthy, commendable, and a matter for other businesses to emulate—not something to be held up as against the public interest.

2. The staff report consistently ignores real cost factors in discussing price increases. For example, what has been the economic cost in steel resulting from the depletion of the Mesabi Range, if any? What has been the cost in medical care arising from increased cost of doctor training, advanced type hospital equipment, increased research and development in drugs, etc?

It is almost axiomatic that rapid technological growth has increased costs through

making much equipment and many skills obsolete. The staff report advocates more money—and Federal money to boot—in the field of medical research and development, without commenting upon the basic fact that we are in an economic imbalance today resulting from the technological revolution we are still experiencing in health matters.

3. Although the price of living indices have advanced most rapidly in the area of services, the cost factors underlying services remain unexamined and receive little or no comment. In this conjunction also are the economic factors underlying "tight" money. Essentially there is a shortage of investment capital, resulting from increased demand. It seems axiomatic that demand for investment capital is bound to increase rapidly.

4. The staff pays little or no attention to the question of determining what is economic growth and what proves to be economic waste. Little attention is paid to the limitations we experience in the tools we use in measuring economic growth.

Economic growth may be unhealthy and misshapen growth. The gross national product includes economic mistakes as economic growth. The GNP fails to measure production capacity; it weighs only actual use of capacity in a given year. Rome was not built in a day, so it is true that no economy was built in 1 year. What we have from the past which is still usable is as important as what we might build in a given year. That becomes a part of the accumulated capital plant which the measurement of annual growth fails to compute.

Essentially, the staff report fails to recognize the keystone of the private enterprise system—which is the use of the marketplace as the tester of economic ideas, as opposed to the use of select groups of men to judge new economic ideas.

The private enterprise system is to the science of economics what the trial-and-error system, the laboratory system, has been to the physical sciences. The planned economy system is what the scholastic system was to the physical sciences in the Middle Ages, when chemistry was alchemy and astronomy, astrology.

Until those who believe in the private enterprise system really understand that which they believe in to the extent that they can become articulate about it, the battle for the private enterprise system being fought in the Halls of the Congress will continue to go against them. This second session of Congress will provide no change in this pattern. The logistics and strategy have already been set. Tactics at this time cannot win the battle, although they may delay things until the proper logistics and strategy are developed. I won't predict in which areas the marketplace will be replaced by political bureaucrat decision by the action of Congress, but when the session has ended we will have moved closer to the socialistic state.

Medical Care for the Aged

EXTENSION OF REMARKS

OF

HON. THOMAS B. CURTIS

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 22, 1960

Mr. CURTIS of Missouri. Mr. Speaker, on September 27, 1959, I gave a speech before the American Academy of General Practice—physicians—at Kansas City, Mo. Three weeks later I gave the same speech before the convention of Missouri insurance agents in St. Louis, Mo.

I had prepared this speech for delivery to these seemingly diverse groups intentionally. Both groups are concerned with the problem of medical care for our people. The doctors are primarily concerned with the problem of the adequacy and the quality of medical care. The insurance people are primarily concerned with the problems of cost of medical care to our people.

We, the people's representatives in the Federal Government, are concerned with how well we are meeting all the problems of medical care in our society and what part, if any, the Federal Government should or might play in moving ahead toward a solution of these problems.

This speech serves as background for a further and more detailed discussion of the problem of medical care for the aged which I shall undertake tomorrow under a special order to speak, which I have been granted.

The above-mentioned address follows:

ADDRESS BY HON. THOMAS B. CURTIS BEFORE AMERICAN ACADEMY OF GENERAL PRACTICE STATE OFFICERS CONFERENCE, KANSAS CITY, MO., SEPTEMBER 27, 1959

The American people seem to be genuinely concerned about inflation. The genuineness of their concern is borne out by the fact that they now relate inflation to Federal governmental expenditures and Federal taxes.

There was a time when a political philosophy of tax and tax and spend and spend did mean elect and elect. That was in the days when the wealth in the United States was distributed in sufficient disproportion that those on the short end of the stick looked upon the Federal Government as an efficient device for redistributing the wealth. And those on the short end of the stick were in sufficient number when, united by a common purpose, they became the majority at the elections.

However, today with the wealth more evenly distributed and certainly the Federal taxload being placed primarily on the overwhelming majority of the people instead of on the rich, it has become apparent that the Federal Government is no longer the efficient device for redistributing the wealth that it once was. At least the Federal Government in bringing about redistribution is no longer redistributing from richer to poorer, but in accordance with no recognizable formula, unless it is of one from those who have learned to use political power to those who have not learned to use political power. However, redistribution in accordance with such a formula is hardly one that will gain the support of the majority of the people at the polls. Quite the contrary—as it becomes more widely known that this is the effect of Federal Government redistribution of wealth, the majority of the people will oppose the political philosophy of Federal expenditures and Federal taxation, unrelated as it has been to what the expenditure is for and unrelated to the efficiency with which Federal expenditures achieve the purpose sought.

What I have said here, if true, and I believe it is true, should be a source of great comfort to the medical profession in its fight against what it has properly defined, in my judgment, as socialized medicine. If what I have said is true, then we can begin to discuss the question of Federal expenditures on the basis upon which they should be discussed and not upon the emotional and irrational basis of the past which springs from the cultivated belief that almost any Federal expenditures meant a redistribution of the wealth from those who have to those who have not.

I have not said that the medical profession has won its fight against the various projects to have the Federal Government spend federally collected taxes in the medical field; I have merely stated that now the medical profession can have a rational public debate on the merits and demerits of Federal expenditures in these areas. They will no longer be fighting against a hidden but powerful emotion in the breasts of the majority of the American people which looked upon Federal expenditure as being of some personal benefit inasmuch as they were not the ones who paid for it.

It will be noted that the old New Dealers, today's reactionaries who want to go back to the old days of spend and spend and tax and tax, still use indigency as the vehicle to get most of their programs enacted into law. Although some of the younger, in years, members of this reactionary crowd, realizing that indigency in the United States has not the meaning that it had in the 1930's, have latched onto another vehicle upon which to carry their program of spend and spend and tax and tax. The new vehicle they seek to employ is the fear of Russia.

It is important to realize that these middle 20th century reactionaries are not so lacking in intelligence or so full of wistful thinking as to construct their vehicle out of an impossible pumpkin. There still is such a thing as indigency and it is a real social problem. There is such a thing as the Russian threat. The important question is whether they will be able to use the problem or the threat in such a way that rationality again gives way to emotion so that Federal expenditures becomes synonymous with solving the problem or the threat.

Does anyone question that this is occurring? I am certain if they sat and listened through the congressional hearings and the floor debate on these issues over the past 10 years they would see this subtle switch on the part of many of the same people from indigency to Russia.

It is true that there is another emotion tied into Federal health programs—that is the emotion of all human beings to regard death and disease as a social and, even more important, a personal enemy. What must be done with this emotion is the same that must be done with these other human emotions. Channel it into the right direction and not let the neo-Federalists, the mid-20th century reactionaries I have previously referred to, make Federal expenditures synonymous with fighting the enemy. I am afraid they have already made considerable advancement toward achieving the synonymity. The enormous increases in the appropriations to the National Institutes of Health, in my judgment, rests primarily from their achieving this end.

But, in meeting this problem, it is important to realize that counteracting the emotion is only the first stage of action. Counteracting the emotion only puts us in a position of rationally debating the question of how does our society best meet the social enemy, disease and death? If not through Federal expenditures, how?

Indigency, Russia, and disease. The quacks say the patent medicine Federal tax money, if taken in sufficient quantity and often enough, will cure all three and a number of minor ailments as well. An analysis of this patent medicine reveals that it is heavily laden with opium and the well-being that seems to follow after immediate dosage stems from a deadening of the senses, not a deadening of that which alarmed and activated these warning senses. Opium is a valuable drug when used properly and under careful direction and, coming out of the metaphor, it is important that we don't condemn Federal spending per se simply because some of us see the damage it has caused and may cause. It is important only that we rationally consider when Federal

spending can and should be used and when it should not be used.

I want to discuss another public emotion which the doctors must face in dealing with the problems involved in the relationship of their profession to the Government. Now that the people are alerted to the dangers of inflation, they have become concerned with the cost items of the goods and services they purchase which go to make up the cost-of-living increases which they assume are identical with inflation.

Indeed, the general public is not alone in considering cost-of-living increases as inflation per se. Many professional economists seem to view the two phenomena as interchangeable. I shall discuss the difference between the two with particular reference to medical costs. I am certain the medical profession is aware of the fact that the doctors, hospitals, pharmaceutical industry and other industries related to health have become, to some extent, the bête noire of those who are now shouting about the cost-of-living increases.

Indeed, the neo-Federalists perversely use this increased cost item as a further argument to concentrate more power in the Federal Government. Nothing that will serve to increase the power of the Federal Government seems to escape their hungry eyes. They are in the forefront crying that the Federal Government has to regulate in some way or other these costs to keep them down. At the slightest indication of an economic disturbance they urge price controls. So effective have they been in their propaganda that in a recent Gallup poll the majority of people who, when asked which political party they thought was most concerned about keeping prices down, stated the Democratic Party over the Republican Party. The neo-federalists, being almost completely within the Democratic Party, can claim credit for this image through their propaganda in advocating price controls.

Costs of hospitals, doctors, drugs, nursing service all have increased more rapidly since World War II than probably any other set of costs in the cost of living indexes. But costs are only one side of the coin. The other side of the coin is the quality of the product or the service one buys. In the cost of living index a day at a hospital is the same, whether the day was spent in 1920 or 1959. But does one get the same results for a day in the hospital in 1959 that one got in 1920? Hardly so. Improved equipment, medical knowledge, drugs, etc., mean that the average stay in a hospital is quite a bit less, and the number of those who come from the stay on their own feet instead of in a box is considerably higher. Furthermore, the vast majority of our people utilize hospitals today when formerly it was almost a luxury reserved for people with adequate means and people located near the urban areas.

Inflation in its economic sense means debasing the currency. In theory, the same thing costs more because the dollar has changed its purchasing power. Increased cost of an item might be inflation, but it also might be the result of the quality of the item having been improved. If the item has been improved it is axiomatic that there has been some cost for that improvement. This cost will be reflected in the price of the item, or absorbed in the saving resulting from increased productivity in the manufacture and distribution of the item, or absorbed in the saving resulting from a greater quantity production of the item (which is similar to increased productivity).

Undoubtedly there has been some saving in the human health industries resulting from increased productivity and from the efficiency gains of larger productions because more people buy health services these days. On the other hand, this is a field in which there has been a tremendous technological improvement. The rate of improvement has been so great that it can appropriately be called a revolution. Rapid economic growth of this sort (technological improvement) carries with it an increased amount of obsolescence. Not just obsolete equipment and tools, but also obsolete human skills. Furthermore, rapid growth such as this is based upon increased research, development, and education. All of this costs considerably. It costs a great deal more at the time it is going on than the savings resulting from increased productivity. This is the period in which we presently are.

The question the public should be asking themselves about medical costs is not the question of what the increased cost is but, is what they are getting worth the cost. In the field of health I doubt if anyone, upon analysis, regrets the $10 a bottle we pay for one of the new mycins. Certainly, he could still buy a patent medicine for a dollar a bottle which makes even greater claims to health than the wonder drugs. But he spends the dollar, or either the $10, out of choice.

So having discussed the factors which the advocates of socialized medicine have been using as arguments for their program, indigency, Russia, disease and cost, and having pointed out that these are emotional and unreal arguments, the question still remains how does our society move ahead in combating the real problems of indigency, Russia, disease and costs?

First of all, we must recognize that the path to attaining these goals are not in all instances the same path. Indeed, the path to decreased costs is definitely going in a different direction from that of combating disease and staying ahead of Russia. Combating disease and staying ahead of Russia requires more, not less, technologicl advancement. It requires more education, research and development and will bring in its wake more obsolescence, not less. All of these items are bound to increase costs and so aggravate the problems of indigency as well as the problems of cost.

In respect to the first two goals, our society through the private hospitals, privately operated medical profession, the private pharmaceutical industry, the private nursing profession, has done an amazing job over the past few decades. Never in the history of the world has there been such advancement in combating disease. I see no argument or reason whatsoever for stating that we are not "going fast enough" in advancement through our present setup. Therefore, the arguments for more Federal expenditures in this area seem without foundation.

Indeed, by going as fast as we have in this area we have aggravated the problems of cost and indigency. Our people now live 10 years longer due to the advancements in technology in the health field, but there has been little planning for financing the extra 10 years our citizens now have. Indeed, when our people over 65 today were starting out their productive lives they based their savings (consciously or unconsciously) upon the average life expectancy. Increased cost of living both from increased standard of living as well as unadulterated inflation has badly damaged what planning they could do entirely apart from the extra 10 years they unexpectedly have been called upon to finance.

The Federal Government by its own default in properly handling the fiscal affairs of the Nation has aggravated the problem almost as much as the technological advancement has. The Federal Government's basic contribution to economic affairs is to maintain the dollar as an accurate measuring stick of human labor, ideas, and savings. I think before we call upon the Federal Government to do anything more in the field of solving the problem of cost we need to call upon it to do its basic job to preserve the dollar as an accurate measuring stick. If the Federal Government does not do this, it is almost impossible to solve the problem of cost.

The advocates of the Federal Government entering the field of solving the problem of increased cost claim that this must be done to spread the costs among all of our citizens. I asked the AFL–CIO representative at the recent hearings on the Forand bill what difference there was between Federal Government insurance and private insurance. Although he had been spending a great deal of time testifying on the subject of the Forand bill, he suddenly discovered that he was taking time from other witnesses. He stated that he didn't think he had time to answer this question.

Well, this is a basic question. What is the difference between spreading the risk through Federal insurance and spreading the risk through private insurance companies? Well, first of all, the private insurance companies must deal with people who can afford to pay for the insurance and, therefore, cannot be solving the problem of indigency. Should the problem of indigency become involved in the problems of spreading risk among the bulk of our citizens who are not indigent?

I think not. In fact, by failing to separate the problem of indigency from the problems of insurance we damage our progress in meeting both the problems of indigency and the problems of cost.

There is a second difference between Federal insurance and private insurance. Whichever sector of the society is used, Government or private, an insurance program requires capital formation. There is only one way for the Government to acquire capital, that is through taxation. But anytime Government provides the capital formation, it withdraws both the capital and the insurance operation itself from the tax base. It leaves the problem of future taxation more difficult. Furthermore, and possibly even more important, in insurance capital formation, the capital must be invested. Government cannot, or let's say, has not up to date, invested in anything other than its own securities. Private enterprise, on the other hand, properly invests in the economic growth of the society. The Government investment is sterile as well as withdrawn from the tax base.

Furthermore, there is a great danger in Government capital formation. A realization of the sterility of Government investment in its own securities has stimulated the neofederalists, always looking as I have stated, for any argument to place more power in the hands of the Central Government, to suggest that they invest in Federal public works bonds. Up to date, I have always left this subject with the statement I leave it up to your imagination the complications and economic damage that would result from the Government going into the investment field. I still leave it up to your imagination, but I am afraid the time is not far off when somebody is going to have to spell out in detail just what this damage is. The neo-Federalists are pushing their theme.

I am satisfied that the private insurance companies have been doing a tremendous job in meeting the problem of spreading costs in the field of health. However, the job has not been sufficiently good to keep up with the needs resulting from the great technological revolution in the field of health. On the other hand, I believe we are reaching a plateau and future advancements will not be as great as those in the past. This will give us some chance for a breather. In all of the advancements in extending the length of life expectancy there has been no extension of the total life span of man. It still remains around 115 years. All of the advancement has been in the area of having more men and women approximate the goal of 115 years. Death rather than disease

is the social enemy. But now that death is being unmasked, the philosophers are again raising questions as to whether death is the social enemy we have all assumed it is. We have made these assumptions in direct conflict with the religion we profess which does not regard death as a social enemy. Sudden death through accident or disease, yes, but accident and disease are the enemies, not death.

Finally, I come to the question of indigency. I was greatly impressed with the testimony of the AMA representatives at the Forand hearing when they pointed out that inadequate health services were peculiar on a geographical basis, not on a basis of human chronology. In other words, where there were inadequate hospitals and doctors' care, all persons regardless of age felt the brunt of this inadequacy, not just the aged. Where the medical facilities were good in a community, all the community benefited from these good facilities, regardless of age.

This, to my mind, quite clearly points out that treating indigency on the basis of age is a wrong way to attack the problem. For this reason, the Forand bill which does seek to treat inability to pay for health facilities on the basis of age is basically in error. It will hurt rather than help in treating the problem of indigency. Furthermore, as I have previously suggested, because the Forand bill mixes indigency up with spreading the costs of those who are not indigent, it hurts the solution of indigency and it also hurts the solution of the cost problems which the 98 percent not indigent have.

Indigency should not be proliferated according to age or according to health, housing, education, food, or anything else that is a human necessity or human want. If a person is indigent, that person is in need of whatever housing, health, food, and love and affection, too, possibly. Indigency must be dealt with on an individual basis and it must not be confused with other social problems, else it will damage the solution of these other social problems and not be helped itself. What are the causes of indigency? It can be community indigency or it can be individual indigency. The two are separate problems and likewise should not be confused if we wish to solve them. Community indigency is largely a problem of economics and should be kept in the field of economics for solution. The Federal Government can be of real assistance in solving the problem of community indigency, but primarily by working on the economic climate not through direct intervention. Direct intervention can create more problems than it solves.

Individual indigency is a separate thing and we must ponder over it more than we have. Jesus said the poor shall be always with us. I believe I understand what he meant and it wasn't community poverty he was referring to. I believe he was referring to the poor of mind or those poor in talents. We do have and always will have many people with IQ's below 90. People who are capable of mingling in society appearing to be as normal as anyone else in the society and yet, due to their poverty in human talents, a prey to anyone who would take advantage of them. I believe the poor must be cared for on an individual rather than upon a political basis. Administering to the poor has always been a great weapon for politicians in controlling elections. Administering to the poor should be a matter of charity, not politics, and I use the word charity in its finest sense.

I believe the poor, or the problem of individual indigency should be left essentially to our community chest agencies, to our churches. Government can help the indigent through the medium of these private agencies.

Fortunately, the problem of community indigency is being solved in the United States. There is much still to be done, but I believe our society is getting on top of this problem. The problems of human indigency are by no means beyond the abilities of the 98 percent of our people who are not individually indigent to care for. To do this, we must keep our thinking straight and keep the problems of the poor from being confused with other problems.

Much needs to be done in the field of health, but much is being done. The goose which produces the golden eggs must be nourished and cherished. Impatience and greed which the neo-Federalists exhibit end only in death and no more golden eggs.

Our Monetary System: High Interest Rates Are the Same as a Sales Tax on the Great Majority of the American People, Except That the Revenue From This "Tax" Goes To Fatten the Profits of the Financial Institutions and the Incomes of a Few Wealthy Families

EXTENSION OF REMARKS

OF

HON. JAMES C. OLIVER

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 22, 1960

Mr. OLIVER. Mr. Speaker, on March 21 I called attention to a most unusual and informative series of articles published by the Texas Observer, of Austin, Tex., dealing with our monetary system and many of the Federal Reserve's present policies and practices.

These are extremely important articles, it seems to me, because they deal with a subject which intimately affects the economic well-being of all of us, as well as perhaps our national posture in the contest with Russia and the other countries that are pursuing the Communist brand of economic organization. Consequently, when I mentioned these articles previously, I put the first of the series into the CONGRESSIONAL RECORD as an extension to my remarks. Today I invite the Members' attention to the second in this series of articles, which is titled "High Interest Is a U.S. Sales Tax."

The high interest policy is, indeed, equivalent to a tax on the American people. It is a tax from which about 98 percent of the people lose and about 2 percent of the people enjoy an unwarranted bonus. The second of this series of articles is unlike the others in that it was not written by the staff of the Texas Observer, but is a statement contributed by our colleague from Texas [Mr. PATMAN].

Those people who are under an illusion that the Republican Party has established a record of fighting inflation and that the Democratic Party is the party of inflation have a surprise in store. The gentleman from Texas has prepared a tabulation of all of the roll-call votes on the issue of inflation during the World War II and postwar years. The factual record as to how the members of the two parties have voted on the question of checking inflation has shown that the Republican Members of the House over the years have voted consistently and overwhelmingly for inflation and against measures to check inflation.

I will not give away the plot but will reserve for the reader an opportunity to learn the exact scores in the article below. This article appeared in the Texas Observer of January 15:

HIGH INTEREST IS A U.S. SALES TAX

(By WRIGHT PATMAN)

TEXARKANA.—If Congress passed a stiff sales tax—one which would take a big bite out of every dollar consumers spend for groceries and everything else—many people would be up in arms about it. It is no wonder, then, that many people resent the administration's high-interest policy.

For 98 percent of the people the high-interest policy amounts to the same thing as a sales tax, except there are two notable differences. First, the tax is somewhat hidden and the uninformed consumer does not recognize it as one of the things causing his dollar to shrink. Second, this hidden tax is not going to pay the cost of Government nor reduce the Federal debt, but does fatten the incomes of a few families of great wealth, plus, of course, the incomes of the big bankers and Wall Street money dealers.

Consider what high interest has done just to the cost of owning a home. The present rate on FHA guaranteed mortgages, compared to 1952, means that the typical home buyer today—one with a $13,500 mortgage—is paying out an extra $4,500 in interest charges. The chairman of the House Subcommittee on Housing recently computed the cost this way: This average family purchasing a home today could have an added bedroom and an added bathroom, and perhaps a garage also, for what it is paying in extra rates on most other things. The increase in FHA rates is relatively modest—a mere 35 percent since 1952. The total cost of high interest to the average family would come to a staggering amount if anyone could compute it. It takes a huge bite out of the budget of the family that buys an auto, a washing machine, or anything else on time.

More than that, it shows up in increased prices, because business firms—retailers, distributors, manufacturers, and so on—must all have credit. Increased interest rates have increased business costs. Today the average American family is paying $200 a year in interest charges just to carry the Federal debt, and this is being rapidly increased as old bonds issued at lower rates are being retired and replaced with new, high-interest bonds.

There is nothing new about the Republican high-interest policy, nor about the cry that high interest fights inflation. This is an issue between the two political parties as old as the Republic itself. Oldtimers will well remember that when the great depression was at its worst—when factories were closed down, 10 to 12 million were unemployed, the men were standing in breadlines all over America—the Republican policymakers were crusading against inflation just as much as today, if not more so. Actually, this crusade was continued even during World War II.

To illustrate, recently I found in my files a letter written to me in early 1942 by the late, great Senator Robert L. Owen of Oklahoma, in which he said this: "'Inflationary' has become an epithet of denunciation for any expansion of credit. It is used as a financial ghost to frighten the unintelligent." (Senator Owen, I might add, was longtime chairman of the Senate Commit-

tee on Banking and Currency; he helped draft the law setting up the Federal Reserve System and was one of the alltime great experts on our money and banking system.)

Despite all the talk about inflation when interest rates are at issue, Republican policy has been anything but good when real inflationary issues have been at stake. A few years ago I had tabulated all of the rollcall votes in the House between the beginning of World War II and the end of 1954 on measures where inflation was directly and plainly involved. There were 36 such rollcall votes in this period, having to do with such questions as whether we should have price controls during World War II, whether we should have more taxes to pay more of the cost of the war, and so on. There were 7,000 votes by Democratic House Members and 6,600 votes by Republican Members. These Republican votes were 76 percent for inflation and only 24 percent against inflation. The Democratic votes were 32 percent for inflation, and 68 percent were against inflation.

Incidentally, the letter from Senator Owen which I just mentioned was concerned with an issue which is with us again today. The issue was, and is, this: "When the Federal Reserve decides to increase the Nation's money supply, which method should it use?" The Federal Reserve has two methods. It may itself acquire more Government securities, in which case the interest payments on the securities are returned to the Treasury and the taxpayer is saved this cost. The other method is for the Federal Reserve to change its regulations so as to permit the private banks to create the money with which to acquire more Government securities. In this case there is no cost to the banks, but the interest payments go into bank profits.

Naturally, many bankers oppose the first method. It not only denies them an opportunity to pick up more Government securities free of charge, it also tends to reduce interest rates generally. When interest rates on Government bonds go down, all interest rates go down. The present Federal Reserve Board is siding with the private bankers; but during World War II and up until the present administration, the Board sided mostly with the public.

Perhaps I should point out that the Nation's money supply is not fixed, but is increased when and as the Federal Reserve decides it should be increased. Generally, the money supply should be increased along with increased production of goods and services, otherwise a money pinch will tend to prevent an increase in production from taking place.

During World War II the Democratic administrations managed the Federal debt without raising the interest rate on long-term Government bonds above 2½ percent. This was also true in the postwar years—up until mid-1951—even though there were shortages of materials and no price controls. Naturally, many bankers did not like the low-interest policy and set up cries of inflation, but not quite for the same reason they are crying inflation today. The present administration has raised interest rates on long-term Government bonds to 4¼ percent, and at this point it is stopped by a law passed during Woodrow Wilson's administration, in 1918, which sets a ceiling at this level.

During the past session of Congress the Wall Street bankers and administration brought all kinds of pressures to get this ceiling repealed, but Congress refused. The great crusade against inflation now being intensified, with the help of new recruits from the advertising council and many national organizations, is aimed at stirring up grassroots support for repealing this 40-year-old law. If this succeeds, all interest rates will continue upward and the average family will be even harder hit.

Plainly, the tight-money and high-interest policies have done none of the good things claimed for them. These policies brought on the great recession of 1957–58, yet even then, when industry was operating at low gear, the big unions obtained wage increases and the big corporations raised prices to cover the increased wage costs, and then some. High interest comes out of the economic hides of the unorganized and less powerful, namely, the consumer and small-business man and the farmer. To illustrate, farm income has gone down from $15 billion in 1952 to about $12 billion in 1959. But personal income from interest has gone up from $12 billion in 1952 to about $22 billion in 1959. Not more than 2 percent of the families profit, on balance, from high interest. For example, U.S. savings bonds are the most widely held kind of interest-bearing obligation. By law only individuals can own them, and they are aimed at small investors by being issued in small denominations and made available on payroll savings plans. Yet a recent Federal Reserve survey shows that only 5 percent of the American families own 87 percent of the $42 billion savings bonds outstanding, and 73 percent of the families own none.

Key Points Are Listed

Texarkana.—In a statement of points which "should not be overlooked" in the Observer's report on the monetary situation, Representative Wright Patman said:

"Over 40 years the Government interest rate on long-term bonds has been fixed at not exceeding 4¼ percent. During this time we have gone through depressions and inflations and the rate was maintained at approximately 2½, seldom over 3 percent, with no demand to increase the overall of 4¼ percent, until President Eisenhower demanded it recently.

"During 12 years, from 1939 to 1951, the Federal Reserve maintained the long-term rate at 2½ percent, and bonds did not go below par. During a part of this time the Federal Government was spending a quarter of a billion dollars a day in World War II. During a part of this time we had the greatest inflation threat caused by the holdup of purchasing power at a time when goods were not available and people holding this purchasing power all wanted to spend it at one time after the war was over. Notwithstanding this most trying time in history for our fiscal policies, the Government long-term rate was maintained at 2½ percent, and these bonds did not go below par.

"If such rates can be maintained as indicated, they can be maintained any time if the Federal Reserve Board and the Open Market Committee will cooperate. The truth is, the Open Market Committee is composed of five members who are selected by the banks, with the other seven, Federal Reserve Board members. Seven members of this Board are selected for 14-year terms by the President and the other five are selected by the commercial banks who profit from their operations. This is a weakness right here. The people who profit from high interest rates are fixing them.

"On the national debt we are paying $1 billion more in interest in 1959 than in 1958. We are paying $4 billion more in 1959 on roughly the same debt in 1952. Our President is forcing an extortionate interest rate policy by allowing Federal Reserve to be independent. It is robbery in broad daylight.

"One of these days the people will get the truth about how our money system is manipulated by a few, and a change will be made. It is difficult to get the facts over when only one side is carried in the press or included in news information by other means of communication."

Sound Economics Can Make Good Politics

EXTENSION OF REMARKS
OF
HON. ALEXANDER WILEY
OF WISCONSIN
IN THE SENATE OF THE UNITED STATES
Tuesday, March 22, 1960

Mr. WILEY. Mr. President, the 1960's promise new plateaus of economic achievement for the American people.

The bright outlook includes opportunity for more jobs, greater personal and national income, attainment of new goals in business and industrial programs, and better living for our people.

At the same time, the future will place ever-greater demands on our economic system.

Among other challenges, there will be the need for: Advancements to meet the needs of a fast-increasing population, now numbering about 180 million people, and a progressing country; supporting a strong, and costly, national defense program; and successfully meeting the ever-growing economic competition from the Communist bloc.

We recognize, of course, that there are differing theories—even among experts—on how best to further improve our economic system.

Unfortunately, also, realistic efforts to resolve problems are sometimes frustrated, regrettably, by attempts to make political footballs out of economic difficulties. Despite this tendency by would-be opportunists, however, I continue to believe sound economics make the best politics.

In the long run, adherence to fundamentally-sound economic principles can be the only reasonable basis for long-term solutions of our problems in this field.

Now, what are the practical steps necessary to combat inflation and promote progress? These include: First, realistic Federal spending policies; second, a balanced budget, and, if possible, a surplus to begin reduction of the national debt; third, carefully restricting Federal programs to proper limitation of Federal responsibility so as to prevent undue competition on the money market or create unnecessary competition with private enterprise; fourth, revision of the tax structure to plug loopholes, eliminate inequities, provide incentives for economic growth and expansion, and reduce the inflationary effect which taxes—apparent and hidden—have on prices; fifth, further educating our people to the realism that demands for more and more services by the Federal Government can only postpone the time for a lessening of the tax burden; and finally, sixth, assuring a competitive climate in which businesses, industries and other enterprises—both small and large—have an opportunity to prosper and make their contribution to our economic life.

Overall, the Government, as well as consumers, labor, industry and all others, have a proportionate responsibility not only for sharing in the efforts

to combat inflation, but also to promote economic health for the country.

How?

Through sound buying, borrowing, spending, and saving practices by consumers.

Labor: By making only realistic demands for pay and better working conditions based among other factors upon productivity.

Industry: By establishing realistic pricing-and-profit practices on commodities.

Recently, I was privileged to publish an article in the American Bar Association Journal entitled "Sound Economics Can Make Good Politics."

Reflecting further upon additional factors involved in promoting economic strength, I ask unanimous consent to have the article printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SOUND ECONOMICS CAN MAKE GOOD POLITICS

(By ALEXANDER WILEY, U.S. Senator from Wisconsin)

Not since the Greenback Party heyday in the 1880's has there been as much congressional debate of economic-fiscal policies as there has been in recent months. Listening to the new economic prophets of cheap money at any price, of Government pumping additional money into the economy and the inevitability of inflation—all in the name of full employment and growth, naturally—one may almost feel guilty to sound the old-fashioned notes of dollar stability and budgetary restraint.

Speaking recently to an American audience, the former president of the Central Bank of the Federal Republic of Germany had this to say:

"To a foreigner it seems almost absurd that there should be certain quarters in the United States where inflation is tolerated or even recommended. Surely any price to be paid for inflation must be excessive, considering not only the adverse economic and social effects, but the irretrievable losses in national prestige it may entail. Reports of inflation in the United States would not only mean the depreciation and ultimate devaluation of the dollar, but also an acute decline in the moral authority, power, and international stature of the United States."

And on the lessons of inflation, German economists are certainly entitled to speak authoritatively. The devastating German runaway inflation of post-World War I years still serves as the classic anti-inflation warning in economics textbooks, and it is this lesson that has produced the present German economic vigilance and restraint. That close links bind a nation's prestige to its financial posture is evidenced from the manner in which the emergence of the German mark as a sound and stable monetary unit has enhanced the stature of the new Western Germany in the family of nations.

Yet the full danger of inflation apparently has not yet been sufficiently realized by our "creeping inflation" advocates who continue to preach a theory as old as ancient Rome and the Greenback days, and already discredited that long ago. But this is one time when the man in the street is better advised than some of the economic experts representing him. For the hundreds of letters I receive each month from average Mr. and Mrs. America put the finger on a domestic enemy they fear most—inflation.

IS IT NOT SAFE TO BE THRIFTY ANYMORE?

A recent survey of the country's economic situation concluded: "The gloomiest finding is a weakening of the resistance to inflation." True, most people yearn for economic stability, and four out of five persons interviewed thought that prices, wages, and profits should be held from going higher for the next 2 years. But at the same time these people had little hope that this will happen and 7 of every 10 thought that prices would continue to rise.

To the well-known economic perils of inflation may thus be added the psychological impact of this acceptance of the inevitability of inflation: an erosion of individual and public confidence in the soundness of our currency and economy, with resultant injury to the long-acquired habits of thrift and economic prowess.

A middle-income businessman recently interviewed on the question of inflation responded thus:

It just isn't safe to save anymore. I decided inflation couldn't be stopped. So I cashed in all my insurance and bought stocks.

The lack of faith in the cures of inflation, slowly turning into mass uncertainty, tends to accentuate the already existing problem and may turn the slow march toward inflation into a stampede. The present heights of the stock market are certain evidence of the population's desire to have its savings sheltered from inflation, through a rush into equity investments. What would happen to our economic balance if the present uncertainty turns into a material-value psychosis, with more bondholders, insurance holders, and the like, all at once deciding to liquidate their assets?

The serious effects of the inflationary trend in recent years are easily ascertainable. The 1939 dollar todays buys 48 cents worth of goods. The standard indicators of the decline of the purchasing power of the dollar, the Wholesale Price Index and the Consumer Price Index, have risen more than 50 percent between 1946 and 1958. A survey of rising prices indicates that under Roosevelt, the cost of living rose 3.3 percent annually and under Truman, the cost of living sprinted 6.8 percent each year. (Of course, under Roosevelt we had war, and under Truman the postwar problems.) Since 1952, the rise in the cost of living has been held to an average gain of 1.4 percent. In the last 3 years the increases in the Consumer Price Index have still been only moderate; 1.5 percent in 1956, 3.4 percent in 1957, 2.7 percent in 1958, 0.9 percent in 1959.

This slower increase which is referred to as creeping inflation, may not seem to be very large to the uncritical observer. But an annual rise of 2 percent will wipe out half of the purchasing power of the dollar in 35 years, and a 3-percent rate will result in a similar reduction in less than 25 years.

The proponents of inflation say there is no need to worry about inflation, as long as it is of the "creeping type." Since many labor contracts already have escalator clauses, it is suggested that such clauses might be extended to pensioners, insurance beneficiaries, bondholders, and the like—thus permitting everybody to adjust their income with inflation. But it takes a little critical thinking to realize that not everybody can equally ride the escalator at the same time. And as one commentator has put it: "It is the height of folly to imagine that we can inflate without some groups paying the price."

A further weakness of the creeping inflation proposition is its assumption that we can police inflationary trends at will. But let us ask this of the proponents of creeping inflation: "How do you confine inflation and keep it down to a so-called 'delightful' and 'reasonable' 2 percent per year?" It is not too difficult to see that inflation cannot be kept automatically within prescribed limits. For if the public becomes aware of an official policy to permit a limited depreciation of the dollar, it will try to protect itself, and by so doing it will inevitably accelerate the pace of the price rise. As one commentator put it:

If the public knows there will be a creeping inflation of 2 percent per annum, then the 2 percent will be reached not at the end of the year, but at the beginning, and the pressure for inflation will mount.

It must be concluded, therefore, that unless remedial action is undertaken to curb inflation—a large and increasing section of the population will be exposed to its harmful and often devastating effects. Inflation, obviously, affects most adversely that part of the population that must depend on a nonvarying income, or an income that does not vary as fast as the price increases—Government workers, other public servants, school teachers, unskilled workers, bondholders, and the 20 million of senior citizens and others living on annuities, pensions, social security, and public aid. The list includes also the farmer who was traditionally thought to favor inflation because it acted to increase land values, but who currently finds himself unable to pass on his rising costs to the consumer. And due to recent population trends, produced by the growth in the population's life expectancy and the increase in the number of people in public service, an increasingly larger percentage of the people is placed on the inflation victim list.

THE FUTURE OF THE DOLLAR IS THE FUTURE OF AMERICAN ECONOMY

The adverse effects of inflation are felt not merely on the purse of the individual American. Its direct impact on economic growth, periodic recessions and the balance of trade must not be underestimated.

Inflation hinders long-term economic growth by discouraging the savings which produce the capital necessary for the country's economic expansion. American economy must continue to expand in order to meet the increasing and more varied needs of the American people, and in order to hold back the growing Soviet economic offensive. The major key to future economic growth in America is increased productivity, and the greatest contribution to such an increase is the investment in new machines and equipment—but the magnitude of such an investment depends upon the level of savings.

This is a time when we can ill afford to lag behind. At present the Soviet industrial output is still estimated to be only 45 percent of ours. But realizing that the rate of growth in Soviet production is about 9 percent annually, while our annual growth is less than 3 percent, it becomes apparent that with the situation remaining substantially the same the Russian economic handicap may disappear and they could catch up with us in as little as 12 to 14 years.

The table that follows shows how long it will take the Russians to catch up with us, if we do not watch out.

[In years]

U.S.S.R. rates of industrial growth	U.S. rates of industrial growth		
	2 percent	3 percent	4 percent
7 percent	17	21	28
8 percent	14	17	21
9 percent	12	14	17
10 percent	11	12	14

For those that still think about Russia as the backward industrial country of 1918 or 1928, this will come as a shock. But it is with this realization that we must look at the need of future economic developments in America—and such developments will not be possible in an economy crippled by inflation.

Inflation, furthermore, by interfering with the free operation of the economic forces

tends to make our recessions much worse and weakens our post-recession recuperative facilities. The accumulation of excessive and burdensome inventories during inflation periods—because of the prospect of higher prices as inflation continues—saturates the markets to the point that they are unable to absorb new products, thus slowing down post-recession recoveries. Inflation, similarly, will lead industry to temporary overexpansions, due to the fear of increasing costs, but such expansions must eventually be followed by cutbacks, thus accentuating the problems of cyclical unemployment.

Inflation, finally, has adverse effects on our foreign trade and may cause the United States to be priced out of world markets. The high prices of American products, to which inflation contributes, weaken our competitive position abroad—where 5 percent of what American factories produce is being sold, providing 5 million jobs for American breadwinners.

Unreasonably high production costs make us also much more vulnerable to foreign competition in our own domestic markets. While our 1958 export of manufactured goods still remained 2.4 times as large as our imports, the trend in the last 2 years has definitely been toward a more balanced foreign trade. It is now estimated that the 1959 exports of $15,900 million will exceed imports only by some $900 million, which appears like a disastrous drop in comparison with some of the recent exceptionally high excesses of exports over imports, running more than $6,500 million as late as 1957. But while remembering that the earlier unusual excesses were caused by World War II and postwar needs, and that no country has held such a lopsided trade balance for very long, we must not, at the same time, permit our economy to be inflated to a position of competitive disadvantage. Several pockets of unemployment, in my State and in others, can already be attributed to our disability in specific industries, to meet the prices of our oversea competitors.

That the stability of the dollar is essential to the stability and growth of the American economy is all too obvious. What needs to be determined, however, is what measures would most effectively act to curb inflation. And one big question will then still remain: Will we have the wisdom, the courage and the determination to pursue the necessary remedies?

INFLATION AND THE PROPHETS OF INEVITABILITY

Traditional economics explains inflation in terms of the supply and demand theory, saying that whenever an increasing amount of money is bidding for a limited quantity of goods, prices are driven up. Usually it is assumed that it is the Government money printing presses that produce this increasing supply of money, either directly or indirectly—through fiscal and monetary policies and the operations of the Federal Reserve System. But what must be remembered is that more money in the marketplace does not always mean that new money is being created. More money bidding for goods could also mean that money hitherto in the hands of the population, but unused, is suddenly appearing from its hiding places to compete in the market. Thus while Government fiscal policies and Government spending have a tremendous impact on economic trends, fiscal and monetary manipulation alone will not halt inflation in a relatively free economic system. Certainly the Government cannot be expected to do the job of inflation policing alone. Since the reasons for inflation are manifold, only a comprehensive program which will take all factors into account will provide an effective remedy.

I am certain that there is no need to elaborate here on the factors customarily advanced as responsible for inflation. But it would be desirable to keep in mind the broad composite of the elements contributing to inflationary pressure:

(1) Governmental expenditures based on debt financing which by increasing the amount of money in circulation create inflationary pressures; (2) governmental overspending in areas where full employment already exists, thus creating excessive and price-raising demands for facilities and labor; (3) floors under commodities which raise prices higher than the level set by the free play of the forces of supply and demand; (4) excise and other taxes which penalize or hinder business growth; (5) excessive import quotas and tariffs, which permit the keeping of artifically high prices for some products; (6) inefficiency in management and inefficiency in production. (Listing the factors which are traditionally stated to be inflationary in terms of price levels is not necessarily an argument against the practices named. For it must be realized that in our complex and comprehensive society some of these practices are quite essential for the protection of our social and economic way of life.)

It is on top of these classical concepts of inflation that the new schools of economists have mounted their newer interpretation of modern inflation. And although the classic theories have not been totally discarded, the vogue these days is to give top listing to the two new theories of "cost-push" inflation and "administered price" inflation. The first, which is contrasted with the classical "demand-pull" inflation, is described as an upward moving wage-price spiral—a vicious circle in which higher wages cause higher prices, which in turn necessitate higher wages, ad infinitum. The second theory, again, explains inflation not as a product of free market play but as a result of the restrictive price-fixing schemes of big business.

In these new theories the prophets of the inevitability of inflation find the foundation for their dogma. Creeping inflation, say they, is the price that we must pay for the maximum growth of our economy. Growth, according to this school, has always been accompanied by inflation, and now too we have two alternatives: either economic growth inescapably accompanied by creeping inflation, or else, price stability accompanied by economic stagnancy and unemployment. And the choice, so they say, is ours to make.

These prophets of inevitability have been divided into two schools—those putting the blame on labor and those attributing it to industry. According to the first, the rise of strong trade unions makes it almost inevitable that economic expansion will be accompanied by rising labor costs. Thus when the rate of expansion is sufficiently high to produce virtually full employment, unions are in a strong position and are able to raise wages far faster than the increases in output per man-hour. Accordingly, the fact is cited that during the 11 years of 1947 to 1958, hourly earnings in all private industry rose about twice as fast as real product per man-hour—for while the rise in hourly earnings was 66.7 percent, the rise in real product per man-hour was 33.6 percent. It is to these extra wages, unmatched by additional products, that inflationary pressures are attributed. To prevent any further inflationary moves, claim the critics, it is industry's duty to stand fast on present wage contracts and not permit any new unjustified wage increases.

Labor, on the other hand, is proposing to find the main reason for inflation in industry. Postwar wage increases are therefore shown to be merely chasing prices up, and labor is pictured as attempting only to restore the real value of labor earnings. Even as middle of the road a reporter as Business Week, in commenting on the role wages played in postwar inflation, found that "unit labor costs seem to have followed prices uphill through most of the postwar years." If labor is not responsible for inflation, the real culprit must therefore be elsewhere. It is here that the theory of administered prices comes into being, a theory which charges business with eliminating the flexibility of the free market, and creating a new type of inflation by monopolistically and artificially maintained high industrial prices.

To determine the existence and extent of administered prices practices the Antitrust and Monopoly Subcommittee of the Senate, of which I am a member, has been conducting extensive hearings for the last 2 years. These hearings dealt with the problem of administered prices in the automobile, bread, roofing, and steel industries. One of the measures proposed as a cure to this problem is Senate bill 215, introduced by Senator O'MAHONEY, which seeks to keep the prices of key products down by exposing the big corporations, in a selected number of industries which seem to set the price pattern, to public opinion pressure through a requirement that no price increases be undertaken without prior public notice and a hearing to justify such increase. But although self-restraint on the part of industry in setting prices is to be much desired, I question the wisdom of this bill's interference with price and market flexibility. Still, if industry and labor do not develop a more responsible economic attitude, legislation of this type will become necessary.

But whether subscribing to one of these new theories or the other, several of the new economists allege that the new facts of American economic life will make ineffective the standard measures designed to fight inflation. An economy that is geared to growth and is favorable to high employment, say they, is also favorable to increased prices. Thus, so long as demand is near full employment levels, we must expect that in industries characterized by strong firms and strong unions, prices and wages will react on each other in a steady upward spiral.

The desirability, and indeed the necessity of American economic growth, we will most certainly accept. But that inflation is here to stay, and that more of it is still coming, is not, in my opinion, a necessary conclusion. Economic facts and developments are in a constant state of flux, and I believe that a reappraisal of many accepted economic assumptions may raise serious doubts as to the soundness of the predictions of the inflation prophets. Furthermore, inflation can be fought and must be fought, but like all other social maladies, the remedy is not simple or speedy.

A PROGRAM FOR AN ANTI-INFLATION OFFENSIVE

A recent study of the relationship between economic growth and inflationary trends has produced some interesting new comments on the relative independence of the two. "Despite popular opinion to the contrary," says Edwin L. Dale in the New York Times magazine: "inflation has not been the normal condition of the American economy. It has been neither usual nor unusual. Prices were lower in 1890 than they were at the end of the Civil War, and the period was one of fairly rapid economic growth and expansion. Prices were stable during most of the 1920's. A great deal of the price rise in the past 150 years has been associated with wars and their immediate aftermath."

Accepting the thesis of the war's responsibility for inflation, some economists forecast only very limited future rises in living costs, now that the postwar adjustment has finally set into effect. It is their view that the use of the classic weapons against inflation, in recent times, was still being blunted by the spending and lending powers generated by World War II. Since

the banks emerged from the war with $90 billion worth of Government securities and only $26 billion of loans to their borrowers, any Government attempts to tighten the money market were ineffective since the banks could simply sell some of the security reserves to get the funds to make more loans.

But now, some 14 years later, the country is finally growing out of the enormously inflated money supply with which the economy emerged from the war. In the more or less normal peacetime prosperity of the 1920's, the total money supply in the country was a little over one quarter of the gross national product. At the end of World War II the money supply soared to about one-half of the national product, thus making more money available to chase after the produced goods—but recently we have gotten back to a more normal ratio of less than one-third. This, according to some economists, should act to substantially relieve inflationary pressures in times to come. But stability will occur only if our economic policies take advantage of these natural developments, not if we go contrary to them.

In addition to this natural development in our economy, which may considerably lessen the factors driving for inflation, more effective protection against inflationary pressures must be provided by a planned and coordinated program, requiring both governmental and private cooperation.

There have been some crash programs—designed to knock out inflation—which have contained one or more of the following suggestions: (1) stop Government spending and deficit budgets; (2) abolish farm and other subsidies; (3) cut taxes; (4) tear down import barriers; and (5) break up large corporations and powerful unions. But in looking for means to stop inflation, we must make certain that we are not also knocking out our economic system and our way of life. For example: It is the national policy of this country to protect its citizens against unemployment. Unemployment carries a high price tag: in terms of broken homes, loss of self-respect, and loss of national product. We cannot, therefore, undertake to curb inflation at the price of increasing unemployment. Likewise, we cannot stop inflation at the cost of substituting centralized planning and a totalitarian economy for our long existing and generally successful economic freedom. It must be further remembered that there is no magic in a stable price level. Naturally, stable prices going hand in hand with an expanding economy is the most desired situation. But stability of prices during the 1920's did not prevent a most catastrophic depression—and price stability may often conceal inequalities in the economic structure which may eventually upset the effective working of the whole economy. Our aim therefore must be price stability coupled with economic growth; price stability under which employment is full and the individual is free; price stability under which the economy is not unduly restrained.

GOVERNMENT CONTRIBUTIONS TO STOP INFLATION

Government spending: The oft-repeated proposal for cutting Government expenditures does not offer a simple solution, since national security, increasing demands for Government services and the dangers of unemployment necessitate certain levels of spending. But Government enterprise should be more and more directed to those areas where additional Federal expenditures will act to relieve depressed conditions and to reactivate idle labor and facilities—rather than increase pressures in areas where labor and facilities are already fully utilized.

Balanced budget: A balanced budget does not offer a magic formula, since a balance could coexist with unemployment and a slow rate of economic growth. But deficit financing is inflationary in nature, and although a balanced budget is not always attainable, we should have it as often as we possibly can. Balancing the budget will also go a long way psychologically in convincing the people that the Government is determined on fighting inflation.

Fiscal-monetary policies: The Government can help stabilize prices by tightening credit policies, and this has been one of the most effective means for combating inflation in England, in recent years. But naturally, we do not want a tight money policy which subordinates economic growth to stable prices, and which creates substantial unemployment. It is most essential that we have flexible monetary policies—designed to meet changing needs and to aid market adjustments. But the flexibility of such policies greatly depends on the Government's own financial position: For Government deficit budgeting may produce pressure on the Federal Reserve System to follow an easy money policy, to assist in financing and refinancing Government deficits.

Farm subsidies: It has been said that supporting prices of basic farm commodities at parity is a potent source of inflationary pressure, while at the same time offering only temporary relief to farmers—since the basic farm problems remain unanswered. Because technological progress has tended to make the large commercial farm relatively efficient, 44 percent of our farms now produce 91 percent of the value of marketed farm produce. Quite often it is the affluent farmer that is being subsidized, while little help is going to the needy one. The rise in output per man-hour has in recent years been more rapid in agriculture than in the rest of our economy, but the farmer cannot be deserted because he has learned to be more efficient. Still, with Government payments continuing to comprise 40 percent of net farm income, and the Federal-held surplus and pledged loans totaling more than $9 billion by the end of 1959, we must search for more permanent, constructive, and lasting solutions for the farming sector of our economy. Developments to bring industry into the farm areas should be encouraged and relocation and retraining grants should be made available to assist the submarginal farmer desiring to enter more promising employment.

Cutting taxes: Cutting taxes, unless we also produce an equivalent reduction in Federal expenditures, will act to encourage inflation rather than to slow it down. But a reform of the tax system, with the main emphasis upon measures that will produce the means for financing research and modernization of our industrial machinery, is an important part of any effort to increase the efficiency of the economy and to keep costs and prices down.

Cutting personal and corporate income taxes and the modernization of depreciation laws are necessary developments, but as long as the people require more and more Government services, and as long as international security requires tremendous expenditures, only minor relief can be expected in the total tax picture.

Foreign trade: Foreign competition, it is said, can generally be expected to act as stimulus for the reappraisement of costs and prices, while high tariffs and import quotas help keep up domestic prices and shelter inefficiency and monopoly. It is quite probable that the United States can at times make its economy stronger by exposing its producers to fair competition from abroad. But modifications in a free trade policy are necessary in order to protect strategically essential industries, or to protect our economy against subsidized and unfair competition. Since cheap labor abroad coupled with effective new machinery and plants, to which we have contributed through our foreign assistance, may have adverse effects on our own economy—it may be necessary to study the further need for quotas. Still, if inflation in this country is harnessed there is no reason why we should not be able to compete favorably with other countries—both in our own and in foreign markets.

Curbing bigness: The efficiency, mobility and the power of our economy are directly related to its size. There is no crime in bigness, for a big country requires big business. Breaking up large corporations and powerful unions will not by themselves stop inflation. Breaking up unions in several parts, so there would be several unions in the same industry, would not have the intended results—for confusion, rivalry and union warfare would certainly not act to diminish the upward pressure on wages. Likewise, giving the job of big industry to a large number of uncoordinated and resources-poor entrepreneurs will not aid efficiency or lower prices.

But constant vigilance is necessary to make certain that competition becomes more vigorous and pervasive in American economy. The claims of "administered prices" in American industry, as well as the complaints of wage increases causing "cost-push" inflation, indicate that constant Government attention must be directed to the maintenance of a competitive order both in industry and in labor. With labor income comprising some 62 percent of the national income, it is evident that wages have a substantial impact on consumer prices, and thinking citizens will agree that antimonopoly controls must apply to all kinds of private economic activities—whether carried on by industry, commerce, labor, professional associations, cooperatives or any other combines. Such controls, however, must not be exercised in a haphazard, fragmentary and disjointed manner. Creating a just and proper balance in our economy requires the production of a comprehensive program, well-coordinated and positive in approach, in which the legislative, administrative and judicial branches of the Government must cooperate.

PUBLIC INITIATIVE IN COMBATING INFLATION

Our economic system—to which we have been fondly referring, in recent times, as "people's capitalism"—is dependent for its true success not on centralized direction and scrutiny of the Soviet type but on widespread creativeness, ingenuity, and cooperation. "people's capitalism" implies that the means of production are not merely in the hands of the few giants of industry, but are dispersed among large numbers of property holders, professional people, farmers, public servants, and laborers. "People's capitalism" does away with the discredited Marxist theories of capital-labor struggle, predicted to work the internal destruction of capitalism, and strives, instead, toward a closer working partnership between all the elements participating in the national production: capital, management, and labor.

It is with the belief in "people's capitalism" that I am calling for a rapprochement of management and labor—to plan together for the common and public good, and to work together against the destructive powers of inflation.

Management by enlisting the active cooperation of all employees, from top executives to the lowest of orderlies, can succeed in reducing the ratio of payroll expenses to sales revenues. "At the present time," we must agree with one expert commentator, "only a few enterprises really succeed in gaining the active cooperation of their workers. Today the most important capabilities of the American workers, their imagination, their ingenuity, their ability to invent and to discover shortcuts are rarely put to use because methods of management in most

plants are not designed to bring out these qualities. Indeed, most managers have little conception how much ability is going to waste through not being used."

Encouragement of productivity through a system of bonuses, providing workers with additional pay whenever the ratio of payroll costs to sales is reduced, has proved effective in the industries that have tried it. Stock options to labor as well as management increase the sense of partnership. Still, the use of these procedures is not widespread enough and their more general adoption will depend on an increasing degree of mutual confidence and a change in some of the adversary philosophies of management and labor. I believe that these and other new management methods, designed to enlist all units of production in improved teamwork, hold great promise for checking rising costs.

Labor, likewise, must exercise statesmanship and restraint in its constant drive for higher pay and better working conditions. It must be remembered that higher labor pay may be almost totally canceled out by the higher prices of the commodities that labor must buy. Some inflationary force has been previously provided by union-management bargaining in key industries, for although only less than one-fourth of our workers are unionized—the effect of increased wages was often felt throughout the labor market. But the situation is now changing, and the developments in the steel strike indicate that the settlement is likely to produce no substantial increase in the price of steel. If the changed attitude in steel and auto negotiations will be heeded by other labor contracts, the increases in the cost of labor and the resultant impact on prices will be much more moderate in the early 1960's than it has been since the end of the war.

Generally, public encouragement should be given to the nongovernmental sector of our economy in any of its endeavors to increase national productivity, to guide production into items with greater durability, less obsolescence and lower prices. For as the chief manager of the Union Bank of Switzerland put it recently:

"Higher productivity will be able to keep prices down and money sound, provided that management will finally feel the moral responsibility to pass technical progress on to the consumer in the form of lower prices."

I have, therefore, noted with full agreement the recent statement of Dr. Raymond J. Saulnier, Chairman of the President's Council of Economic Advisers, that in order to achieve general price stability, price reductions must be accomplished in the industries "where productivity gains are especially rapid." In fact, Dr. Saulnier urged both labor and management in those fields to forego part of the gains of productivity in the public interest; labor by accepting lesser wage increases than the productivity gains, and management by cutting prices instead of taking the productivity advances in higher profits. Thus, both labor and business should be urged to exercise better judgment and more responsibility in setting prices and wages consistent with general stability. And competition should be preserved in both products and in labor so as to limit the power of business and labor to set unreasonably high prices and wages. England and Germany are apparently finding solutions, cannot we—we reasonable Americans—exemplify our reasonableness by using good judgment?

GOOD ECONOMICS WILL MAKE SENSE

It has been said the term "inflation," like the term "rheumatism" at the turn of the century, covers a multitude of ailments. With the multiplicity of factors which contribute to inflation, it is obvious that no one all-purpose pill will cure it. We have listed the reforms that are needed in several fields, and it would be unrealistic if we forgot that there always are formidable obstacles to changes in public policy. Such comprehensive Government and private sector policy to curb inflation may appear to present some difficult problems, because at first glance it may seem to pit the general interest in a stable dollar against many organized and vocal special interests. But I believe that the program outlined by me demonstrates that anti-inflation action can be taken without serious or lasting damage to any of the constituent parts of American economy. Still, all these interests and groups must be educated to understand that their own welfare turns, in the long run, upon a strong and effective national economy, adaptable to change and capable of competing in the international market.

I believe that the essential first step in the campaign for a stable dollar is the restoration of the public confidence in the stability of our currency. A legislative statement proclaiming the goal of stabilizing the purchasing power of the dollar is one appropriate way of demonstrating Government's determination to act.

The second necessary step is the development of an economic plan which will combine our desire for stability with our need for growth. A strong statement urging creative thinking on the economic future appeared recently in the St. Louis Post-Dispatch:

"There is not much doubt that the economy can be expanded rapidly if the Federal budget is rapidly inflated. But to conclude * * * that we need only spend a lot more Federal money fast is to ignore the crucial parts of the problem. How can we get a satisfactory rate of growth without inflation and without relying on a vast military effort? * * * Perhaps the answer lies in some kind of economic plan based on a controlled increase in creative public expenditures, accompanied by taxes to pay for them. Devising such a plan is the task of economic statesmanship, and putting it into effect the task of political leadership. Cannot our society generate the political and economic resources necessary to meet such a plain challenge? This much is certain: Unless we do meet this supreme challenge of our times, we shall see more and more peoples drifting toward communism, fewer and fewer committed to the islands of freedom."

To help produce such a plan and to create better and high-level coordination of the several departments and units of government in pursuing both stability and growth, I have introduced legislation for the establishment of a National Economic Council for Security and Progress. I am convinced that the economic challenge posed to the free world by international communism is one of the most serious aspects of the cold war, and that this war may well be won or lost in the markets of the world and on the production line. The proposed Economic Council is patterned after the existing National Security Council, whose main functions are military, and is founded on the belief that planning economic security and progress is as important as planning military defense. Consisting of Cabinet secretaries and other top-level Government officers, it will be the Council's function to advise the President with respect to national and international economic development, and to enable the departments and agencies of the Government to cooperate more effectively, amongst themselves and with private business, in matters relating to national economic developments and the role of America in world economy.

I should like to say this in conclusion: Let us restore the faith of the people, and we would have taken the first step. But let us not fail to pursue a comprehensive and long-term program that will guarantee our citizens, young and old, working and retired, employed, self-employed, and employing others, the security and stability that are derived from knowing better what tomorrow will bring.

SENATE

WEDNESDAY, MARCH 23, 1960

The Senate met at 12 o'clock meridian, and was called to order by the President pro tempore.

Dr. Claud B. Bowen, pastor, First Baptist Church, Greensboro, N.C., offered the following prayer:

O God, our help in ages past, our hope for years to come, we are grateful to Thee for Thy blessings upon our Nation. We pray for wisdom and the guidance of Thy spirit through these days of decision. Grant, we beseech Thee, that we may always prove ourselves a people mindful of Thy goodness, and of a sincere desire to do Thy will.

May we take seriously the stewardship of our obligations, believing Thy purpose is for the good of all.

Give unto us strength, both physical and spiritual, to bear the burdens placed upon us. Especially do we pray for these Senators, our statesmen, as they serve our Nation and Thee.

We ask these things in the name of Christ. Amen.

THE JOURNAL

On request of Mr. JOHNSON of Texas, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, March 22, 1960, was dispensed with.

SENATOR FROM OREGON

Mr. JOHNSON of Texas. Mr. President, a colleague is about to join us in the Senate. There is on my desk the certificate of his appointment by the Governor of Oregon, to fill the vacancy caused by the death of the late, beloved Senator Richard L. Neuberger.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JOHNSON of Texas. Mr. President, I send to the desk a certificate from the Governor of Oregon and ask that the clerk read it.

The PRESIDENT pro tempore. The clerk will read the certificate.

The certificate of appointment was read, and ordered to be placed on file, as follows:

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that pursuant to the power vested in me by the Constitution of the United States and the laws of the State of Oregon, I, Mark O. Hatfield, the Governor